

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
FALLS LAKE NATIONAL INSURANCE COMPANY,

Plaintiff,

-against-

KALNITECH CONSTRUCTION CORP.,
DAVS PARTNERS LLC, STALIN RODRIGO
REYES ESPINOZA and ASK ELECTRICAL
CONTRACTING CORP.,

Defendants.

----- X

Case No.:
1:22-cv-01473-KAM-PK

**KALNITECH CONSTRUCTION
CORP.'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST
FOR DOCUMENTS AND OTHER
DISCLOSURE**

Defendant Kalnitech Construction Corp. ("Kalnitech") by its attorneys, Sacco & Fillas LLP , as and for a response to Plaintiff FALLS LAKE NATIONAL INSURANCE COMPANY's First Request for Documents and Other Disclosure, allege(s) upon information and belief, as follows:

I. PRELIMINARY STATEMENT

1. Kalnitech reserves the right to object to the competency, relevancy, materiality or admissibility at trial of any documents produced in response to Plaintiff's first Request for Documents and Other Disclosure on any ground, including the ground that one or more documents are irrelevant and immaterial to the issues in this action. Kalnitech's search for documentation is ongoing and it reserves the right to rely on any facts, documents, or other evidence that it may develop, or which may come to its attention at a later time. Kalnitech expressly reserves the right to supplement its responses as and to the extent it may locate additional responsive documents. The production of any document otherwise protected by the attorney-client, work product, or other privilege is not and should not be considered a waiver of any privilege or objection to production.

II. GENERAL OBJECTIONS

1. Kalnitech objects to the Requests to the extent that they seek information which is

protected from discovery by the attorney-client privilege, the work product doctrine and/or any other applicable privilege, doctrine, exemption or immunity.

2. Kalnitech objects to the document requests to the extent that they require the disclosure of confidential, proprietary, or otherwise protected information.

3. Kalnitech objects to the requests to the extent that they seek information that is not relevant to the subject matter involved in the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

4. Kalnitech objects to the document requests to the extent that they require Kalnitech to provide or search for any information that is not within their possession, is in the public domain and/or is already possessed by the Plaintiff, Plaintiff's counsel, or persons/entities who are not parties to this litigation.

5. Kalnitech's general objections shall be deemed applicable as to each request without the need to specifically reference or incorporate them into a specific response and are not waived, nor in any way limited, by the following Responses.

6. Kalnitech reserves the right to supplement these Responses as discovery and investigation continues.

III. RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR DOCUMENTS AND OTHER DISCLOSURE

1. Copies of all discovery exchanged in the Espinoza Action, including but not limited to any bill of particulars, interrogatories, notices to admit, combined discovery demands, demands for document production and deposition transcripts.

Response: Kalnitech objects to this Request as it demands documents which are already in Plaintiff's possession and/or which are publicly filed and available. To the extent a response is required, see Responses Bates Stamp No 1-248.

2. Copies of all contracts, subcontracts, agreements, checks, receipts, bills, invoices, bank statements, and any other documents and materials by, between, or involving any party in the Espinoza Action as to the work at issue in the Espinoza Action.

Response: Kalnitech is not in possession of any documents responsive to this Request.

3. Copies of any and all W-2 forms issued to Stalin Rodrigo Espinoza in effect on the date of the occurrence alleged in the Espinoza Action.

Response: Kalnitech is not in possession of any documents responsive to this Request.

4. Copies of any and all 1099 Forms issues to Stalin Rodrigo Espinoza in effect on the date of the occurrence alleged in the Espinoza Action.

Response: Kalnitech is not in possession of any documents responsive to this Request.

5. Copies of any and all documents, including but not limited to all claim petitions, answers, petitioners' examining reports, respondents' examining reports, report of all treating doctors and bills, discovery demands, discovery responses, deposition transcripts, hearing transcripts, motions, orders, correspondence, claims files, and any other materials with respect to any workers' compensation action and or clean the relevant to Stalin Rodrigo Reyes Espinoza and the accident asserted in the Espinoza Action.

Response: Kalnitech is not in possession of any documents responsive to this Request.

6. Copies of any employee files, check receipts, employee logs, payroll records, and any other documents and/or record pertaining to Stalin Rodrigo Espinoza's employment at the time of the occurrence alleged in the Espinoza Action, as well as one year prior to the loss at issue.

Response: Kalnitech is not in possession of any documents responsive to this Request.

7. Copies of any and all communications between Stalin Rodrigo Reyes Espinoza, his agents, servants, and/or representatives and any of the defendants to this lawsuit, their servants, agents, and/or representatives relevant to the work at issue in the Espinoza Action, the investigation of the Espinoza Action, and the claims asserted in the Underlying Action.

Response: Kalnitech is not in possession of any documents responsive to this Request. To the extent a response is required, see Responses Bates Stamp No 1-248.

8. Copies of any and all communications between any of the defendants to this lawsuit, its agents, servants, and/or representatives and Jim Associates Corp., their servants, agents, and/or representatives relevant to the work at issue in the Espinoza Action, the investigation of the Espinoza Action, and the claims asserted I the Underlying Action.

Response: Kalnitech is not in possession of any documents responsive to this Request. To the extent a response is required, see Responses Bates Stamp No 1-248.

9. Copies of any and all accident reports, incident reports, or any other report or complaint made in response to the incident alleged in the Espinoza Action.

Response: Kalnitech is not in possession of any documents responsive to this Request. To the extent a response is required, see Responses Bates Stamp No 1-248.

10. Copies of any work logs and sign in sheets or books for the date of the occurrence alleged I the Espinoza Action and 2 months prior to the occurrence alleged in the Espinoza Action.

Response: This Request is objected to as unduly burdensome and not calculated to lead to admissible discovery, as it requests documents already in Plaintiff's possession as part of its' appointed insurance defense counsel's defense of Kalnitech in the Underlying Action.

11. The names and address of any witnesses to the incident alleged in the Espinoza Action and/or individuals working on June 28, 2019 at 217-14 Hempstead Avenue, Queens, NY 11429.

Response: Kalnitech is not in possession of any documents responsive to this Request.

PLEASE TAKE FURTHER NOTICE, Kalnitech reserves its right to update, supplement, and/or amend all above responses until and upon the time of trial.

Dated: Astoria, New York

March 13, 2023

/s/ Morris Schlaf

SACCO & FILLAS, LLP

Attorneys for Defendant Kalnitech Construction Corp.

31-19 Newtown Avenue

Astoria, NY 11102,

(718) 269-2226

File No.: 28464-22

To:

Steven Verveniots

MIRANDA SLONE SKLARIN VERVENIOTIS LLP

Attorneys for Plaintiff

Via e-mail

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA,

PLAINTIFF,

-against-

Index No.:

515197/19

DAVS PARTNERS LLC AND KALNITECH
CONSTRUCTION COMPANY,

DEFENDANTS.

-----X
DATE: April 11, 2022

TIME: 11:00 a.m.

EXAMINATION BEFORE TRIAL of the
Defendant, DAVS PARTNERS LLC, taken by the
respective parties, pursuant to a Court
Order, held at the above date and time,
before Aileen Koven, a Notary Public of the
State of New York.

A P P E A R A N C E S:

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KALNITECH CONSTRUCTION COMPANY

605 Third Avenue

New York, New York 10158

BY: ROBERT BRIGANTIC, ESQ.

* * *

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

HUDSON

D W A Y N E H U D S O N, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KLEIN:

Q. Please state your name for the record.

A. Dwayne Hudson.

Q. What is your address?

A. 4423 Seton Avenue, Bronx, New York 10466.

Q. Good morning, Mr. Hudson.

A. Good morning.

Q. My name is Kenneth Klein. I am with the law firm of Gorayeb & Associates and we represent the Plaintiff in this lawsuit. I will be asking you some questions this morning. If you don't understand my question, there is something wrong with the transmission, if I am not speaking loud enough, I am speaking too fast, if I use a word you are not familiar with, any reason at all you do not

1 HUDSON

2 understand my question, tell me and I will
3 try to fix the problem for you.

4 A. Okay. Thank you.

5 Q. The court reporter can't take
6 down nods of the head that usually comes up
7 with a yes or no answer. So you just have
8 to verbalize all of your answers. Okay?

9 A. Yes.

10 Q. Finally, anytime you want to
11 take a break, go to the bathroom, get a
12 call, make a call, just to stretch, any
13 reason at all, you need a break as long as
14 there is no open question, tell me and we
15 will accommodate you.

16 A. Okay.

17 Q. If there is an open question
18 you just have to answer the question before
19 you take the break.

20 A. Yes.

21 Q. In preparation for today's
22 deposition, did you review anything?

23 A. I just had a meeting a few
24 minutes ago. Just kind of jog my memory
25 about some stuff, about the dates. That's

1 HUDSON

2 about it.

3 Q. Did you speak to anybody?

4 A. Yes. I spoke to the lawyer
5 here.

6 Q. Other than your lawyer, did you
7 speak to anybody?

8 A. No.

9 Q. I saw when you were sitting in
10 the other chair you had a yellow notepad in
11 front of you, do you have notes on that
12 pad?

13 A. Just dates. Just some dates I
14 have there.

15 Q. If you are going to use that to
16 testify we have to mark that as an exhibit.
17 We will make that Plaintiff's Exhibit 7.
18 Can you give that document to your attorney
19 when we're finished with the deposition
20 today.

21 A. Yes.

22 Q. He will make copies.

23 A. Yes.

24 Q. He will send copies to
25 everyone.

HUDSON

A. Okay.

MR. RICHMAN: Will do, no problem.

MR. KLEIN: Thank you.

(Whereupon, piece of paper was deemed marked as Plaintiff's Exhibit 7 for identification as of this date by the Reporter.)

Q. Are you currently employed, sir?

A. Yes.

Q. By who?

A. Employed by New York Electric.

Q. When did you become employed by New York Electric?

A. Three weeks ago.

Q. Back in June of 2019, were you employed?

A. Yes.

Q. By who?

A. A.S.K. Electric.

Q. When did you first --

MR. BRIGANTIC: Excuse me.
We're going to have an issue here.

1 HUDSON

2 Just before you get rolling, I
3 subpoenaed documents from A.S.K.
4 Electric and because this was a
5 deposition of DAVS Partners I did not
6 make a stink about the fact that
7 A.S.K. never responded to my
8 subpoena. If A.S.K. Electric which
9 is going to likely be a party to this
10 litigation after this deposition is
11 going to appear as the witness
12 designee for Davs, that can be an
13 issue. Because Davs --

14 MR. RICHMAN: We understand
15 your position.

16 MR. BRIGANTIC: I am not
17 waiving a deposition of A.S.K.'s
18 deposition.

19 MR. RICHMAN: No one said you
20 are waiving. I am not taking a
21 position that you are waiving. Right
22 now A.S.K. is not a party. Why don't
23 you proceed.

24 MR. BRIGANTIC: Then how is
25 this a party deposition?

1 HUDSON

2 MR. RICHMAN: He is here on
3 behalf of -- how is this a party
4 deposition? Then there should be no
5 party deposition. Because A.S.K. is
6 not a party. Then we should cancel
7 the deposition altogether.

8 MR. BRIGANTIC: Can you ask the
9 witness to step outside your office
10 for a minute?

11 MR. RICHMAN: Sure.

12 MR. BRIGANTIC: Off the record.

13 (Whereupon, a discussion was
14 held off the record.)

15 MR. BRIGANTIC: I just want to
16 put on the record that we had a
17 conversation off the record so that
18 we didn't add up all the stuff into
19 the transcript and it was agreed that
20 by proceeding today with Mr. Hudson's
21 deposition Mr. Hudson being a former
22 employee of A.S.K. Electric that my
23 client Kalnitech Construction Corp.
24 is in no way waiving a deposition of
25 A.S.K. Electric or a representative

1 HUDSON

2 of Dava Partners itself.

3 MR. RICHMAN: That's agreed to.

4 MR. BRIGANTIC: Thank you. I
5 appreciate the courtesy.

6 Q. So Mr. Hudson, you testified
7 that on June 28, 2019 you were employed by
8 A.S.K. Electric; is that correct?

9 A. Yes.

10 Q. When did you start with A.S.K.
11 Electric?

12 A. I start in 2013.

13 Q. What was your position on June
14 28, 2019?

15 A. I was in charge of electric,
16 the foreman running the project, doing
17 electric for the new office.

18 Q. Were you a project manager?

19 A. Yes.

20 Q. Your employer was A.S.K.
21 Electric; is that correct?

22 A. Yes.

23 Q. Then what were your duties as
24 project manager back in June 2019?

25 A. Well, my duties like I say I am

1 HUDSON

2 in charge of electric. So from the demo to
3 the new buildup and the guys doing work
4 need me, also electricians. I would be in
5 charge of them plus I also work on the
6 project myself, also.

7 Q. Are you familiar with a company
8 known as Davs Partners?

9 A. I only familiar with the boss.
10 I just found out about the company right
11 now. I work for A.S.K. Electric. I
12 believe David owns -- I'm saying I work for
13 A.S.K. Electric. They're company Davs.
14 Davs Partners I heard is the owner that's
15 under the contract. That's on the project,
16 the same owner. My boss David Kleeman,
17 David Kleeman, they also own Davs Partners.

18 Q. How do you spell Kleeman?

19 A. K-l-e-e-m-a-n.

20 Q. So David Kleeman is the boss of
21 A.S.K. Electric; is that correct?

22 A. Yes.

23 Q. To your understanding, he is
24 also a partner in Davs Partners?

25 A. Yes. Yes.

1 HUDSON

2 Q. Are you familiar with certain
3 property at 217-14 Hempstead Avenue in
4 Queens?

5 A. Yes, that's the location of the
6 new office I was working on.

7 Q. Do you know who the owner of
8 that property is now?

9 A. David Kleeman.

10 Q. Do you know when he became
11 owner of the property?

12 A. I don't know.

13 Q. When you say he is the owner,
14 are you saying he is the owner individually
15 or as Davs Partners LLC or you don't know?

16 A. For me. I don't know. His has
17 new office and so I am saying he is the
18 owner of the new office. I don't know
19 about the old background behind the
20 David -- the Davs Partners, that I don't
21 know.

22 Q. Could you describe what is
23 there, what that property looks like? In
24 other words, is it a five story building, a
25 two story building, one story building,

1 HUDSON

2 what is there?

3 A. It's actually one story
4 building. Half of it, the basement and one
5 story. Pretty long property. So it kind
6 of almost extends the full length of the
7 property.

8 Q. You said there is a basement
9 and a first floor?

10 A. Yes.

11 Q. Is that how it looked back in
12 June of 2019?

13 A. Well, yes. Yes. It was under
14 construction. So we just renovating it.
15 Everything brand new, AC, you know, brand
16 new electric. With different designs that
17 they put based off of the plan they were
18 working on.

19 Q. Was it a new building being
20 built or was it an existing building being
21 renovated?

22 A. Existing building being
23 renovated.

24 Q. When did that project start,
25 approximately?

HUDSON

A. Up until the incident the project go on for about six months.

Q. Has the project been completed?

A. Yes.

Q. As of when?

A. Exact date, I do not know. But from the accident I think it was maybe like another three months. Everything was finished and they moved in.

Q. Are you familiar with the term general contractor?

A. Yes.

Q. What is your understanding of that term?

A. So a general contractor is hired to do a project. So in other words, the general contractor on that job was Gus. He was doing the build out and then we were doing the electric which I work for A.S.K. Electric. So I was doing the build out. I do not take orders from Gus. I take it from David.

MR. BRIGANTIC: Move to strike that. Go ahead.

HUDSON

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2 Q. So you said that the general
3 contractor, was that a person named Gus or
4 a company named Gus?

5 A. Well, the person named Gus.

6 Q. Does he have a last name?

7 A. All of that should be in the
8 notes. I just know him as Gus. I am
9 pretty sure in the notes the lawyer can
10 give you the exact name. The last name.

11 Q. I only want to know what you
12 know. Not what your lawyer knows.

13 A. Yes.

14 Q. So let me finish. We can't
15 talk over each other. If you don't know
16 something you can say I don't know or I
17 don't remember. That's okay. I just don't
18 want you to guess. You don't know Gus's
19 last name; correct?

20 A. No.

21 Q. Do you know, does he work for a
22 company?

23 A. I do not know none of this
24 information from him. I know him on the
25 project. That he is doing that project.

1 HUDSON

2 The office at that time.

3 Q. Do you know if Gus was retained
4 under a contract?

5 A. I do not know.

6 Q. A.S.K. Electric was retained in
7 connection with this project; correct?

8 A. Yes.

9 Q. To do what in general?

10 A. It was their new office. They
11 were relocating to a new Hempstead office
12 that was being built.

13 Q. Did you ever see the contract?

14 A. No.

15 Q. I am going to show it to you
16 and ask you if you ever saw this.

17 (Whereupon, the aforementioned
18 contract was marked as Plaintiff's
19 Exhibit 1 for identification as of
20 this date by the Reporter.)

21 Q. Do you recognize any
22 signatures, sir?

23 A. Yes. David Kleeman.

24 Q. He signed for A.S.K. Electric?

25 A. Repeat the question again.

HUDSON

Q. Do you see on the right side David Kleeman's name?

A. Yes.

Q. Under the portion for A.S.K. Electric?

A. Yes.

Q. You recognize his signature, right?

A. Yes.

Q. You never saw this contract; correct?

A. No.

MR. KLEIN: That was Exhibit 1.

Q. Sir, were subcontractors retained in connection with the project?

A. Yes.

Q. Who retained the subcontractors?

A. Well, they had various, the AC, guys that take care of the AC and like I said the construction part which Gus he take care of that. They have the exterior work which is under Gus also. So that's the only thing I know.

HUDSON

Q. Did you ever hear of a company called JIM Associates Corporation?

A. No.

(Whereupon, the aforementioned proposal was marked as Plaintiff's Exhibit 2 for identification as of this date by the Reporter.)

Q. Sir, do you see this proposal dated May 27, 2019?

A. Yes.

Q. On the screen?

A. Yes.

Q. This is Exhibit 2. Did you ever see this document?

A. No.

Q. Do you see on the left side it says Jim Associates Corporation?

A. Yes.

Q. It says to the right prepared by Jorge Moscoso?

A. Yes.

Q. Do you know who Jorge Moscoso is?

A. That's another contractor that

1 HUDSON

2 came in to finish up the project.

3 Q. Is Jorge affiliated with Jim
4 Associates or is he with another company?

5 A. That I do not know.

6 Q. You don't know if Jorge
7 Moscoso is employed by Jim Associates; is
8 that correct?

9 A. No.

10 Q. You see where it says customer
11 Gus?

12 A. Yes.

13 Q. You don't know who Gus works
14 for; correct?

15 A. I don't know who Gus works for.
16 I know Gus. Gus was the general contractor
17 doing the project.

18 MR. BRIGANTIC: Move to strike
19 that as nonresponsive.

20 Q. Do you know if there was any
21 contract between Gus and Jim Associates
22 other than this proposal?

23 A. No.

24 Q. Did you ever see any other
25 proposals between Jim Associates and Gus?

HUDSON

A. No.

Q. Can you bring up Exhibit 3.

(Whereupon, the aforementioned proposal dated June 12, 2019 was marked as Plaintiff's Exhibit 3 for identification as of this date by the Reporter.)

Q. Sir, you see this proposal dated June 12, 2019?

A. Yes.

Q. It's Exhibit 3?

A. Yes.

Q. It's from Jim Associates Corporation. Do you see that, sir?

A. Yes.

Q. Can you go to the second page? Can you bring up to the bottom? Do you see on this page, sir, that Jorge Moscoso signed for Jim Associates?

A. Yes.

Q. David Kleeman signed on behalf of somebody else?

A. Yes, I see that.

Q. Do you know if he signed for

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HUDSON

Gus?

A. No, I'm not sure.

Q. Do you know if there is any relationship between David Kleeman and Gus?

A. The only thing I know they know each other. I think they're friends. That's about it.

Q. You don't know if Gus is part of Dava Partners LLC; correct?

A. No.

Q. Just for the record Exhibit 4 is a proposal dated June 26, 2019 which also has that general condition page which I just showed the witness. That's Exhibit 4.

(Whereupon, the aforementioned proposal dated June 26, 2019 was marked as Plaintiff's Exhibit 4 for identification as of this date by the Reporter.)

Q. You never saw any of those proposals before, right?

A. No.

Q. Were you at the project on June

1 HUDSON

2 28, 2019?

3 A. Yes.

4 Q. Why were you there?

5 A. Same as usual. Finishing up
6 the project.

7 Q. What hours was the project
8 ongoing? In other words, nine to five,
9 eight to four, what were the hours?

10 A. From seven to 3:30.

11 Q. Was it five days a week, six
12 days a week?

13 A. Five days a week.

14 Q. Monday to Friday?

15 A. Yes.

16 Q. What time did you arrive at
17 work that day?

18 A. As usual. I arrive at work
19 6:45.

20 Q. What is the first thing you did
21 when you got to work?

22 A. First thing I do when I get to
23 work. The guy I am working with I give him
24 the task that he is doing. I will also get
25 myself prepared and ready. Gus will be

1 HUDSON

2 there to set his guys up. The place will
3 be open up. We just continue our regular
4 workday.

5 Q. How many workers did Gus have
6 working under him?

7 A. It's various. There are guys
8 coming in and out. Some days we will have
9 maybe four or five guys there. Other times
10 just only have two guys. Two always be
11 there. But sometimes --

12 Q. What type of work did Gus's
13 workers do at the project?

14 A. They do anything from framing,
15 sheetrock work. Guys working on the
16 exterior of the building, cement work.
17 Basically everything -- they do everything
18 except for the electric and security and AC
19 work.

20 Q. Did Gus workers wear any
21 particular type of T shirts at the job?

22 A. No, not really.

23 Q. Did A.S.K. employees wear any
24 type of T-shirts at the job?

25 A. Yes. We always wear our

1 HUDSON

2 T-shirt, blue that shows the company logo.

3 A.S.K. Electric.

4 Q. So A.S.K. wore blue shirts,
5 right?

6 A. Yes. With the company logo.

7 Q. Did A.S.K. provide any
8 supervision to Jim Associates?

9 A. No.

10 Q. Did they direct Jim Associates
11 workers?

12 A. No.

13 Q. Provide any ladders to Jim
14 Associates workers?

15 A. No.

16 Q. Any equipment or tools?

17 A. No.

18 Q. Do you know if Davs provided
19 any such material or equipment to Jim
20 Associates?

21 A. No.

22 Q. No, you don't know or no, they
23 didn't?

24 A. No, they didn't. Jim -- they
25 have their own tools and they work with

1 HUDSON

2 their own tools.

3 Q. Just so I am clear, Jim
4 Associates is a different company than the
5 company that Gus was with?

6 A. Gus -- that I don't know fully.
7 I am not going to try to answer or guess.
8 I am not really sure.

9 Q. Do you know if Gus was employed
10 by Jim Associates?

11 A. That I don't know.

12 Q. How many companies were working
13 at the project on June 28, 2019?

14 A. It was I would say three
15 companies. You got AC. You got A.S.K.
16 Electric and you got Jim. Jim and Gus guys
17 working together.

18 Q. Did you have the authority to
19 stop working if you saw an unsafe
20 condition?

21 A. Yes.

22 Q. Did you have the authority to
23 stop work if there was an unsafe work
24 method being used?

25 A. Yes.

1 HUDSON

2 Q. Did that apply if you saw a Jim
3 Associates worker doing something
4 dangerous?

5 A. Yes, I would stop it 100
6 percent.

7 Q. Are you familiar with an
8 accident involving one of Jim Associates
9 workers?

10 A. Yes.

11 Q. Do you know someone by the name
12 Stalin Rodrigo Reyes Espinoza?

13 A. That's the guy that got hurt.

14 Q. Did you know him before he got
15 hurt?

16 A. No. I probably saw the guy I
17 think -- we have different guys in and out.
18 I probably saw him twice on that project.
19 He is a fairly new guy that started working
20 there.

21 Q. Did you see that person's
22 accident occur?

23 A. I so happened to turn my head.
24 When I heard the commotion I was working
25 ten feet away. I so happened to turn and I

1 HUDSON

2 saw him tumbling down with a ladder.

3 Q. I would like you to tell me
4 what caused you to look in the direction of
5 where the Plaintiff was or the worker was,
6 what brought your attention to that area?

7 A. I heard a noise. I was working
8 on the electrical panel which was ten feet
9 away from where I heard the commotion. So
10 when I turn and I look towards the closet
11 and then I saw him coming down.

12 Q. Tell me exactly what you saw.

13 A. All right. I saw pretty much
14 he's tumbling down like head first. The
15 ladder and the everything. So he fall kind
16 of head first into the corner of the closet
17 on the right-hand side. There is an
18 opening on the left-hand side of the closet
19 that he was working above that opening.

20 Q. Are you finished?

21 A. No. I am saying there is an
22 opening on the left-hand side he was
23 working. He was working on top. When I
24 heard the commotion and I looked he fall
25 all the way to the right-hand side. Him

1 HUDSON

2 and the ladder tumble down and he went down
3 head first.

4 Q. Did the ladder fall over?

5 A. Yes.

6 Q. What type of ladder was it?

7 A. That was a regular A frame six
8 foot ladder.

9 Q. Do you know whose ladder it
10 was?

11 A. That belonged to his boss that
12 he was working for.

13 Q. Who was that?

14 A. I'm not 100 percent sure if it
15 was Jim or if it was Gus's ladder. But it
16 definitely belonged to general contractor.

17 Q. When you saw him tumbling head
18 first, was he already falling when you saw
19 him or?

20 A. Yes.

21 Q. So you didn't see him go onto
22 the ladder before he started to fall?

23 A. No.

24 Q. You saw him after you started
25 to fall?

1 HUDSON

2 A. When I heard the noise I turned
3 my head and I saw him coming down.

4 Q. Was there anybody holding the
5 ladder at the time that you turned and saw
6 this?

7 A. No. He was by himself.

8 Q. Did you ever speak to the
9 injured worker?

10 A. No. Prior to the incident I
11 never spoke to him.

12 Q. How about after the incident,
13 did you speak to him?

14 A. Yes. I was trying to make sure
15 he was okay. I called 911. I saw that he
16 was hurt. So I trying to make sure he is
17 okay.

18 Q. Did you ask him how the
19 accident happened?

20 A. No.

21 Q. Did he tell you how the
22 accident happened?

23 A. He pretty much didn't -- he
24 pretty much wasn't really talking much. He
25 was hurt. So he wasn't really talking

1 HUDSON

2 much.

3 Q. Did you do any type of accident
4 report after this incident?

5 A. Yes. I sent an accident report
6 to my office.

7 Q. For A.S.K. Electric?

8 A. Yes.

9 MR. BRIGANTIC: Was that
10 produced?

11 MR. KLEIN: I never seen it.

12 MR. BRIGANTIC: I never seen
13 it.

14 MR. KLEIN: But they're not a
15 party.

16 MR. BRIGANTIC: This is not --
17 this is completely inappropriate. I
18 subpoenaed documents. We were told
19 there are no documents that A.S.K.
20 Electric has anyway and now in a case
21 where the Plaintiff has already been
22 deposed and this witness is appearing
23 there is an accident report we've
24 never seen. How is that possible?

25 MR. RICHMAN: I've never seen

1 HUDSON

2 it either. I will make an inquiry.

3 MR. BRIGANTIC: During the next
4 break why don't you check and before
5 this witness leaves if we can get a
6 copy of the report.

7 MR. KLEIN: Let me finish up
8 here and we can check to get it for
9 today. I doubt it.

10 Q. Other than yourself, do you
11 know any other witnesses?

12 A. Of the accident?

13 Q. Right.

14 A. Just the guys who were working
15 there. There was another worker I was with
16 Sayed he was working under me. He didn't
17 see the accident. The regular workers that
18 was there.

19 Q. Did you personally prepare the
20 accident report?

21 A. No. I believe what it was I
22 told him what happened and the date and I
23 sent out a photograph but personally I
24 don't remember me actually signing it. It
25 was more like a verbal report that I give.

1 HUDSON

2 Q. You never saw --

3 A. I didn't sign any documents or
4 anything.

5 Q. You never saw a completed --

6 A. Yes.

7 Q. You never saw a written
8 accident report made regarding this
9 incident?

10 A. Yes. I never did.

11 Q. If there was one, do you know
12 if A.S.K. Electric gave one to Dava
13 Partners?

14 A. No.

15 Q. No, you don't know?

16 A. No, I don't know.

17 Q. How about that photo you said
18 you took, do you still have that photo?

19 A. I do not have it. The office
20 should have it. I sent it.

21 Q. What was it a photo of?

22 A. It was a photo of the injured
23 guy on the ground.

24 Q. Can you bring up Exhibit 5
25 please.

1 HUDSON

2 (Whereupon, the aforementioned
3 photograph was marked as Plaintiff's
4 Exhibit 5 for identification as of
5 this date by the Reporter.)

6 Q. Do you recognize this
7 photograph, sir?

8 A. Yes.

9 Q. What is it a photograph of?

10 A. That's where the guy was
11 working. At the time there was nothing
12 inside of it. There is a little storage
13 section inside the closet on the left-hand
14 side. I recognize that storage section.

15 Q. The ladder was below that
16 opening?

17 A. Yes.

18 Q. Do you recall how tall the
19 ladder was?

20 A. It was six foot A frame ladder.
21 Open fully extended to six foot to the top.

22 Q. Could you bring up Exhibit 6?

23 (Whereupon, the aforementioned
24 photograph was marked as Plaintiff's
25 Exhibit 6 for identification as of

1 HUDSON

2 this date by the Reporter.)

3 Q. Do you see the photograph, sir?

4 A. Yes.

5 Q. Do you recognize the person in
6 the yellow shirt lying on the ground?

7 A. Yes. That's the guy that fell
8 at the accident.

9 Q. Did you take this photograph?

10 A. Yes.

11 Q. Did you take any other
12 photographs?

13 A. No, just the one.

14 Q. You didn't take the one I just
15 showed you before the black and white one?

16 A. No.

17 Q. This is the only one you took,
18 right?

19 A. That's the only photograph I
20 took.

21 Q. Did other Gus employees wear
22 yellow T-shirts like this gentleman has on?

23 MR. BRIGANTIC: Objection to
24 the form of the question.

25 MR. RICHMAN: Objection. You

1 HUDSON

2 are assuming he is an employee of
3 Gus.

4 MR. KLEIN: Well, no. I am
5 asking did Gus's employees wear
6 yellow T-shirts similar to the one
7 the person on the floor is wearing.

8 MR. RICHMAN: How can he answer
9 that question if he doesn't know --

10 MR. KLEIN: I will phrase it
11 this way.

12 Q. Did you see any other workers
13 at the project wearing yellow T-shirts like
14 the person wearing the yellow T-shirt lying
15 on the floor has on?

16 A. My honest opinion they were
17 various different shirts and I actually
18 don't really pay so much attention to
19 exactly what they wear, what they wear.

20 Q. After you took this photograph,
21 did you ever see this worker again?

22 A. Never saw him again.

23 Q. Do you know Jorge Moscoso?

24 A. Jorge Moscoso?

25 Q. Yes.

1 HUDSON

2 A. No.

3 Q. Do you know if he was at the
4 project on the day of the incident?

5 A. Who is Jorge Moscoso? I don't
6 know who that is.

7 Q. He was on that proposal I
8 showed you Exhibit 2 that said he prepared
9 the proposal from Jim Associates.

10 A. Okay. That's information I do
11 not know. I just know the two main persons
12 which are Gus and Jim. My boss David.

13 Q. Was there somebody named Jim?

14 A. Jim.

15 Q. Yes. You said you know someone
16 named Jim and Gus. I am asking you was
17 there a person named Jim?

18 A. No. George and Gus. Jim -- I
19 know George had a brother. It was him and
20 his brother. They run the company.

21 Q. Was George Jorge or you don't
22 know?

23 A. I don't know the last names.

24 Q. Was Gus there on the date of
25 the accident?

1 HUDSON

2 A. He wasn't there when the
3 accident happened. I called him so --

4 Q. You called him later?

5 A. Afterwards.

6 Q. When he showed up afterwards,
7 did you talk to him about the accident?

8 A. Yes. Yes, I explained what I
9 saw, what happened. The fact that the
10 emergency crew came in.

11 Q. Did Gus ask you who the worker
12 worked for?

13 A. He did after. He knows -- they
14 know all of this information. He didn't
15 have to ask me or question me who does he
16 work for. They are obviously familiar with
17 whoever comes to the site.

18 MR. BRIGANTIC: Move to strike.

19 Go ahead.

20 Q. Did you ever ask the injured
21 worker who he worked for?

22 A. No.

23 Q. What was your understanding as
24 to who he worked for?

25 A. I know he works for the general

1 HUDSON

2 contractor. If it's Gus or George, I don't
3 know exactly. I know he works for the
4 general contractor that is doing the
5 sheetrock, the general construction part of
6 the job.

7 Q. So to your understanding, was
8 Jim Associates the general contractor?

9 A. Up to now, Jim, I don't know if
10 he filled in. I know George and Gus.
11 Jim -- is Jim George's brother? I don't
12 know.

13 MR. BRIGANTIC: I am going to
14 move to strike that. Sir, we're not
15 here to educate you.

16 MR. RICHMAN: If you don't know
17 the answer, right, if you don't know,
18 say you don't know.

19 A. Yes.

20 MR. KLEIN: I have nothing
21 further at this time.

22 EXAMINATION BY

23 MR. BRIGANTIC:

24 Q. Mr. Hudson, how far did you go
25 in school?

HUDSON

A. I actually finished high school, just in Jamaica. What we have is CXE. These are back in Jamaica. These are the final exams that we do that's by the government.

Q. So you went to school in Jamaica?

A. Yes, yes. I finished high school, graduated.

Q. When did you come to the U.S.?

A. I came to the U.S. it was in 2000 -- 2005 -- 2005 or so.

Q. Mr. Hudson, how old were you when you came to the U.S.?

A. Probably around 20. Like around 20, 24. 24 or so.

Q. So you were around 24 in or about 2005?

A. Yes.

Q. Let's do this. How old -- sorry --

MR. RICHMAN: Ask him how old he is now.

Q. How old are you now?

1 HUDSON

2 A. I'm 29 right now.

3 Q. Before you came to the U.S.,
4 have you done any construction work?

5 A. No.

6 Q. Have you done any training with
7 respect to construction work?

8 A. No.

9 Q. After you got to the U.S., what
10 kind of work did you start out doing?

11 A. I started out -- actually
12 carpentry. I started doing carpentry. But
13 not experienced. Just basically assisting,
14 cleaning up, stuff like that.

15 Q. Did that work have a title?

16 A. Basically just helping the
17 person that was in charge.

18 Q. Was that a carpenter
19 apprentice?

20 A. Yes.

21 Q. How long did you do that work?

22 A. I did it for I would say six
23 months. Then electrician came on the job.
24 I started learning electric.

25 Q. Did you ever get licensed as a

1 HUDSON

2 carpenter?

3 A. No.

4 Q. Did you get licensed as an
5 electrician?

6 A. No.

7 Q. Are you presently licensed as
8 an electrician?

9 A. No.

10 Q. So after doing six months work
11 of carpentry apprentice work then you
12 started doing electric work?

13 A. Yes. Electrical contractor
14 that came to the job we were working and I
15 asked if he could teach me and I started
16 learning electric.

17 Q. What was the name of that
18 company?

19 A. It was a private guy. He was
20 pretty much working on his own. He didn't
21 have a licensed company or anything. It
22 was a small contractor, starting out.

23 Q. What was his name?

24 A. His name was Rocky the name of
25 the guy that teach me.

HUDSON

1

2

Q. Is that his formal name?

3

A. No. We just call him Rocky.

4

Q. What is his formal name?

5

6

A. His formal name, I don't remember. It's been a long time.

7

Q. How long did you work for him?

8

9

A. I work for him around two years.

10

11

Q. Do you know where his business was located?

12

13

14

15

16

A. He just -- he lived in Rosedale. So he didn't have an office. He just pretty much, I meet him at the job site. He didn't have an office. Just Rosedale where he worked.

17

18

Q. Now, after doing two years of work for him, what was your next job?

19

20

21

22

A. I continue electric. I work two years. I always look to move on and move myself up. So I continued doing electrical ever since.

23

24

25

Q. Listen to me. After you did the two years work with Rocky, what was your -- who did you work for next?

HUDSON

A. After I left Rocky I worked for City-Wide.

Q. City-Wide?

A. Yes.

Q. What kind of business is City-Wide?

A. Electrical company.

Q. Electrical contractor?

A. Yes.

Q. How long did you work for them?

A. I worked for them for a few years. I would say maybe six years or so.

Q. You were able to do that even though you weren't licensed as an electrician?

A. Yes. The company has the license so we work under their permit.

Q. While you were working with City-Wide, did you take any additional training?

A. No. Just on the job training.

Q. You left City-Wide at some point; correct?

A. Yes.

HUDSON

Q. What was the next job you worked at?

A. A.S.K. Electric.

Q. So you went from City-Wide to A.S.K. Electric?

A. Yes.

Q. How did you come to work for A.S.K. Electric?

A. In City-Wide there was a worker I used to work with. His name is Chico. He got fired from City-Wide and then he start work for A.S.K. Electric. So he asked me, begging me to come aboard, come aboard. I waited till another two years, pretty much another two years and I decided to go.

Q. You started work for A.S.K. Electric in or about 2013?

A. Yes.

Q. Prior to working for A.S.K. Electric, did you have any OSHA training?

A. I got the -- no. I got my OSHA training while working with A.S.K. Electric.

1 HUDSON

2 Q. Where did you do that training?

3 A. Long Island City. There is a
4 training school in Long Island City.

5 Q. When did you do it?

6 A. The exact date, I don't
7 remember. First there was an OSHA 30 and
8 as the year progressed we have to keep
9 updating it.

10 Q. So you obtained an OSHA card?

11 A. Yes. Obtained an OSHA card.
12 Whenever that expires we have to redo it.

13 Q. What type of training did that
14 involve?

15 A. Safety. All of it has to do
16 with safety on the job. Everything with
17 safety, proper PE.

18 Q. Did you learn about anything as
19 far as what you needed to do if there was
20 an accident at the workplace?

21 A. Yes. It went through all
22 examples and scenarios that happened.

23 Q. Do you know what a controlling
24 employer is?

25 A. Yes.

1 HUDSON

2 Q. What is a controlling employer?

3 A. Somebody -- it has to be their
4 way or the highway. Meaning they very
5 stern behind whatever they want you to do.
6 They pretty much don't let you breathe.
7 You have to do it their way or that's it.

8 Q. When I ask you about
9 controlling employer, does a controlling
10 employer have any specific responsibilities
11 on a job site?

12 A. I would say they pretty much
13 responsible. If it's their project they
14 responsible for the project. They want it
15 to get done a certain way. Normally like I
16 say safety is always first. Once you
17 follow all the rules and everything then
18 the project will go through smooth.

19 Q. With respect to the job that
20 we're talking about today, when did you
21 first start working at that job site?

22 A. From the date of the accident
23 we started six months prior to when the
24 accident start.

25 Q. So you personally started

1 HUDSON

2 working at the job site six months before
3 this accident occurred?

4 A. Yes, approximately six months.
5 Yes.

6 Q. When you started at the job
7 site, what was your title?

8 A. I am there to do the electric
9 for the new office. Taking care of the
10 electric.

11 Q. Did you have a particular
12 title?

13 A. Yes. I am the foreman,
14 electrical foreman that is doing the
15 project.

16 Q. So you were a foreman on the
17 job?

18 A. Yes.

19 Q. Were you also the project
20 manager?

21 A. Not the project manager. Just
22 for electric.

23 Q. Didn't you testify earlier in
24 this deposition that you were the project
25 manager?

HUDSON

MR. RICHMAN: No, he didn't
testify to that.

A. No, I did not testify to that.

MR. RICHMAN: Just be clear. I
want to make a statement for the
record. Just to be clear he always
said he is the project manager only
for Electric.

MR. BRIGANTIC: I move to
strike that. That's your testimony.
That's not his. The witness is
testifying.

Q. Did this job site have sign in
sheets?

A. No.

Q. On the day of the accident the
only trades that were on the site was the
AC, A.S.K. Electric and Jim Associates?

A. Yes.

Q. Was Kalnitech Construction on
the job site?

A. I do not know them as that
name. So I -- what I told you, I don't
know the names behind all of these

HUDSON

projects. I just find out about all of that stuff just now as we speak. Like I said in terms of the AC, us and Electric and Gus and George, I don't know the exact name and everything that they work under. I just know them as they're responsible for the project.

MR. BRIGANTIC: Move to strike that.

Q. When you say that you just found out about these things, what do you mean by that?

A. By you asking me these names about the companies and everything. That's what I meant. So you asked me about the name of the company. I don't know all of these names that are associated with the project. It's not like I had -- I didn't have -- I go to do the job with electrical part. I don't see all the paperwork, the contracts for the projects. That stuff. That stuff.

Q. The purpose of this job was to renovate this building; is that correct?

1 HUDSON

2 A. Yes.

3 Q. After the job was completed,
4 what person or entity was going to occupy
5 the building?

6 A. My boss which is David Kleeman.

7 Q. Was it being renovated to be
8 occupied by A.S.K. Electric?

9 A. Yes, yes. They transferring
10 from their own location to the new office.

11 Q. You testified that you had the
12 authority to stop work if you observed
13 unsafe activities going on at the site;
14 correct?

15 A. Yes. Yes.

16 Q. Did you observe the Plaintiff
17 and how he was using the ladder prior to
18 this accident?

19 A. I did not. I did not see if he
20 had the ladder or anything. When I heard
21 the commotion I turned and I looked.

22 Q. Why did you have the authority
23 to stop work?

24 A. I am doing the job for my boss
25 that owns the building. I also had OSHA 62

1 HUDSON

2 training, safety. So if I see any
3 conditions and only based on me being a
4 responsible person. If I see something
5 that's dangerous I am going to stop it.
6 That also protects everybody. I like the
7 job go smooth and there is no issues.

8 Q. So you were there as the
9 owner's representative?

10 A. Well, yes, for Electric. I am
11 there if anything happened to the job I
12 could pick up the phone and call my boss
13 and say listen, there is a situation here
14 and I will pass on the information.

15 Q. Was the Plaintiff doing
16 electrical work?

17 A. No.

18 Q. You had the authority to issue
19 a stop work, a stop work order if you
20 observed him doing something unsafe;
21 correct?

22 A. Yes. I would stop a person in
23 a heartbeat.

24 Q. You had that authority as the
25 owner's representative; correct?

1 HUDSON

2 A. Yes.

3 Q. While you were on the job site,
4 you were working for A.S.K. Electric;
5 correct?

6 A. Yes.

7 Q. What is a prime contractor?

8 A. A prime contract?

9 Q. Yes.

10 A. Well, I mean a prime contract,
11 I am just saying --

12 MR. RICHMAN: Only if you know.

13 A. I don't know. I have to look
14 it up.

15 Q. I don't want you to guess.
16 It's not a question of you looking it up.
17 I am asking you, from your --

18 MR. RICHMAN: If you don't know
19 you don't know.

20 MR. BRIGANTIC: Let me finish.
21 I am trying to be fair with the
22 witness.

23 Q. What I am asking you is, you
24 worked in the construction industry now for
25 approximately 17 years?

1 HUDSON

2 A. Yes, approximately.

3 Q. So what I am asking you based
4 on your past work history and your
5 experience, do you know what a prime
6 contract is?

7 A. Yes. It would be the
8 contractor, whoever is assigned to do the
9 project. The contract details what the
10 project entails and what you need to get
11 done.

12 Q. That's the prime contractor?

13 A. Well, that's coming from my
14 perspective.

15 Q. Do you know what a subcontract
16 is?

17 A. Yes.

18 Q. What is a subcontract?

19 A. Well, a subcontract, after you
20 have the main contract it would be the
21 prime contract. The subcontract will be
22 they pass on the work to another party to a
23 portion of it. Like, for example, we as
24 electricians would be a subcontractor to
25 AC. AC work would be a subcontractor of

1 HUDSON

2 the main contract.

3 Q. When you talk about a main
4 contract or the prime contract, who are the
5 parties to such a contract?

6 A. I don't know.

7 Q. Well, I am asking generally,
8 who would usually be the parties to a prime
9 contractor?

10 MR. RICHMAN: Note my
11 objection. You can answer the
12 question.

13 A. It would be the person that
14 owns the project. They would basically
15 have the main contract drawn up to get the
16 job done. So I would say maybe in this
17 case David.

18 MR. RICHMAN: Don't guess.

19 Q. When the Plaintiff was injured,
20 you took the photograph of him on the
21 ground; correct?

22 A. No. At first I attend to him.
23 I took the photograph after I called the
24 ambulance.

25 Q. So you called the ambulance;

1 HUDSON

2 correct?

3 A. Yes. I called the ambulance,
4 911.

5 Q. How is it that you came to call
6 the ambulance?

7 A. Because I am the one that was
8 the closest. I saw what happened. I saw
9 he was injured and like with any person, it
10 doesn't matter what position, what they
11 told -- the first thing you would do is you
12 would seek medical help. So at that time
13 if he's injured, the first thing I did
14 which I did the right thing was to call 911
15 to have them call over to assist.

16 Q. So the first person you called
17 after the accident was 911; correct?

18 A. Yes, because he was injured.
19 If it was something not serious I probably
20 would have maybe reached out. I would have
21 reached out to my boss or so. The person
22 is injured on the ground, it would be
23 selfish for me not to make emergency call.

24 Q. Now, after you did that, did
25 you eventually call your boss?

1 HUDSON

2 A. That was the second phone call.

3 Q. How soon after you called 911,
4 did you call your boss?

5 A. Right after.

6 Q. Your boss is David Kleeman?

7 A. Yes.

8 Q. David Kleeman is your boss at
9 A.S.K. Electric?

10 A. Yes.

11 Q. He is also the owner of this
12 property?

13 A. Yes.

14 Q. After the Plaintiff fell, did
15 he get up before you took the photo of him?

16 A. He did not get up.

17 Q. You were shown a photograph of
18 the Plaintiff laying on the ground?

19 A. No.

20 Q. Earlier in this deposition you
21 were shown a photograph of the Plaintiff
22 laying on the ground; correct?

23 A. Yes.

24 Q. Did you take that photograph?

25 A. Yes. I take that photograph, I

HUDSON

1
2 did not move him. The guys that were
3 there, they kind of moved him out of the
4 closet. He fell inside of the closet. He
5 was inside the closet. His other
6 co-workers that were there, kind of moved
7 him a little bit away from where he fell
8 and he was laying there. Like I said after
9 I call, after I call 911 and I call David,
10 I took a picture.

11 Q. So the photograph that you took
12 of him, did you take it with your cell
13 phone?

14 A. No. What I did I passed the
15 picture onto the office. That would be
16 kept in the records.

17 Q. When you passed it onto the
18 office, that is the office of A.S.K.
19 Electric?

20 A. Yes. I send it to David, to
21 David and yes, I meant to say I sent it to
22 David. I text David a picture.

23 Q. You texted it; correct?

24 A. Yes.

25 Q. You didn't e-mail?

1 HUDSON

2 A. No. I text him the picture.

3 Q. You said that you gave him a
4 verbal report of what happened?

5 A. Yes. I explained the situation
6 how the accident happened and, you know,
7 the procedures after.

8 Q. What did Mr. Kleeman say?

9 A. He was very concerned. The
10 ambulance.

11 Q. Did he tell you to call anyone
12 else?

13 A. I don't remember exactly the
14 conversation but I believe because at the
15 time Gus wasn't there. I had Gus's number
16 so I -- he didn't tell me to call anyone to
17 be honest. He made the phone call but with
18 me I also call Gus. Like I have Gus
19 number.

20 Q. Did you text Gus a picture of
21 the accident, a picture of the Plaintiff?

22 A. Not to my knowledge. No, I
23 don't --

24 Q. Now, when you did your training
25 for OSHA and your safety training, did you

1 HUDSON

2 learn anything about whether you would need
3 to notify the local OSHA office of a work
4 site accident?

5 A. No.

6 Q. Did you notify that the
7 accident took place?

8 A. No.

9 Q. To your knowledge, did OSHA
10 know -- did anyone put OSHA on notice that
11 this accident had occurred?

12 A. No.

13 Q. To your knowledge, did OSHA do
14 an investigation of this accident?

15 A. No one came to investigate --
16 OSHA didn't come to the site to
17 investigate.

18 Q. With respect to the photograph
19 that you took of the Plaintiff as I
20 understand your testimony it does not
21 depict how he landed?

22 A. No. It does not depict how he
23 landed.

24 Q. It does not depict where he
25 landed?

1 HUDSON

2 A. It's very close to. Right
3 there in the corner, the right-hand side of
4 the closet, that's where he landed.

5 Q. It does not depict his body
6 position when he landed?

7 A. No. No.

8 Q. Where did the ladder go after
9 the accident?

10 A. The ladder was leaning back on
11 the side. If you look on the left-hand
12 side of the picture, the ladder -- after
13 that I don't know where the ladder went but
14 the ladder was seen in the picture.

15 Q. Did you ever see the ladder
16 again?

17 A. No. No.

18 Q. After the accident, did you
19 inspect the ladder?

20 A. Yes. The ladder is in good
21 working condition.

22 Q. Why did you inspect the ladder?

23 A. Because I'm curious to see what
24 happened. I was just curious to see what
25 could have happened, why he fell. The

1 HUDSON

2 ladder was fine. So it had to be a
3 situation where he probably had it set up
4 incorrectly.

5 Q. To your knowledge, did Gus look
6 at the ladder?

7 A. I do not know.

8 Q. Prior to this accident
9 occurring you started working on the site
10 six months earlier; correct?

11 A. Yes.

12 Q. Was that when the project
13 started?

14 A. No. The project started
15 before. They did the demolition and they
16 did some restructure and the reframing and
17 then I started once the frame was up. I
18 started running the wires and installing
19 the panels and stuff.

20 Q. So the sequence of the work was
21 that the demolition got done first?

22 A. Yes.

23 Q. Then the framing. Then the
24 interior renovation, right?

25 A. Yes. Yes.

1 HUDSON

2 Q. You were on the site from the
3 first time the interior renovation started,
4 right?

5 A. After the framers finished with
6 the partition with the offices and I came
7 there when I install the electric.

8 Q. How long did you remain on the
9 site working?

10 A. From start to finish. From
11 when I came. When I started to when the
12 project was done, completed.

13 Q. So you were there on-site for
14 the entire duration of the project while
15 the interior renovation was being done?

16 A. Yes. Up until the point where
17 I was 100 percent done with all the new
18 devices, the lights and then I was taken
19 off the project. So I am assuming they
20 probably still have small other works,
21 maybe the carpenters were doing. For me,
22 the electric, when the painting was done,
23 all the new devices, lights and I completed
24 that. Then I was taken off the project.

25 Q. Now, we talked about Jorge

1 HUDSON

2 Moscoso. You mentioned his brother. Who
3 is his brother?

4 A. I don't know much about his
5 brother. I am familiar with George and his
6 brother. The first time I met his brother
7 when his brother came there. I am not
8 familiar with his brother. I am familiar
9 with George from seeing him.

10 Q. Why did you leave A.S.K.
11 Electric?

12 A. Me?

13 Q. Yes.

14 A. I just move onto another
15 opportunity. There was no --

16 Q. When did you last work for
17 A.S.K. Electric?

18 A. About two months ago was the
19 last time.

20 Q. Did you tell Mr. Kleeman you
21 were leaving?

22 A. Well, it was with the
23 supervisor. I had a disagreement with the
24 decision and I decided to leave. So I
25 didn't give notice or anything. I just the

1 HUDSON

2 supervisor, I am not going to do what he
3 proposed and I was going to quit.

4 Q. Who was the supervisor?

5 A. Wazim.

6 Q. How do you spell that?

7 A. W-a-z-i-m.

8 Q. Does Wazim, is that a first
9 name or a last name?

10 A. That's what we call him. I
11 believe that's not his real name. I think
12 Asad, something something. Everyone call
13 him Wazim. I don't know if it's actual
14 name?

15 Q. He worked for A.S.K. Electric?

16 A. Yes. He is a supervisor for
17 A.S.K. Electric.

18 Q. What did he ask you to do that
19 you refused to do?

20 A. Well, I started a project. It
21 was two floors. A nice project. I am into
22 the project probably like I would say 70
23 percent into the project. Pretty much they
24 were having some issues with materials and
25 stuff like that. He wanted another person

1 HUDSON

2 to take over the job. I should work all of
3 them. I was too far into the project. I
4 take my job very seriously. The project
5 was beautiful, real nice. To me I think
6 that was a slap in the face. I refused to
7 do it.

8 Q. Well, did he say that he wasn't
9 satisfied with your work on the project?

10 A. Not a matter of -- that's the
11 thing. It is not a matter of not
12 satisfied. It's the case where there was
13 something that was going on in the project.
14 It started to affect in terms of my
15 materials or so. If I am not mistaken it
16 was before Covid and then Covid came and
17 everything get all expensive. It was a
18 matter of me ordering materials and a
19 matter of certain stuff that they didn't
20 want me to do which is not a case where
21 they kind of critique certain stuff. If
22 they wanted me to go that direction they
23 should have mentioned to me from before and
24 the way I was doing it was nothing wrong.
25 It's just the materials were really getting

1 HUDSON

2 to them. It's two floors -- like 300
3 circuits. I think that's what caused the
4 whole back and forth. Yes.

5 Q. I am a little unclear. Did
6 they want you to use less material? What
7 exactly was the issue?

8 A. No. The issue was -- it was a
9 set of pipes that we were feeding. It was
10 a set of boxes that was feeding us the
11 pipes. The pipes were taking a little
12 longer to get done and the path that was
13 chosen from in the beginning. I try to
14 choose easiest path. It's taking a little
15 longer to get the pipes done. It was a
16 case where the job was 85 percent sheetrock
17 completed, 85 percent sheetrock. So the
18 other issue with the pipe work taking a
19 longer time. Obviously like I said, the
20 materials, all the materials are actually
21 on the job. There is nobody taking nothing
22 off the job.

23 Q. Who is Vanessa Kleeman?

24 A. I do not know. I am
25 assuming -- I am not sure, his daughter or

1 HUDSON

2 wife. I don't know.

3 Q. I don't want you to assume.

4 MR. RICHMAN: Don't guess.

5 Q. I don't want you to assume.

6 Whether or not you know Mr. Kleeman's wife
7 name, did you ever speak to Mr. Kleeman's
8 wife?

9 A. There was a company party, in a
10 brief introduction.

11 Q. Did you ever discuss this
12 particular project that we're here for
13 today with Mrs. Kleeman?

14 A. No.

15 Q. As we sit here today, do you
16 know who owns this ladder?

17 A. The general contractor, they
18 own the ladder.

19 Q. So it was owned by A.S.K.
20 Electric?

21 A. No. Not A.S.K. Electric.
22 George and Gus company. One of them owned
23 the ladder. I don't know exactly who but
24 it wasn't A.S.K. Electric.

25 Q. When you spoke to Mr. Kleeman

1 HUDSON

2 after this accident occurred, you gave him
3 a verbal report; correct?

4 A. Yes.

5 Q. You also texted him a
6 photograph that you took of the Plaintiff;
7 correct?

8 A. Yes.

9 Q. At any time did you write an
10 e-mail or some other form of report to Mr.
11 Kleeman or anybody else as an accident
12 report?

13 A. No. No.

14 Q. So to your knowledge, did
15 anyone prepare an accident report?

16 A. Not to my knowledge. Not to my
17 knowledge. I don't remember me signing any
18 paper.

19 Q. After the accident you spoke to
20 the Plaintiff?

21 A. No, I never seen him again.
22 They took him away. I never seen him
23 again.

24 Q. I didn't ask you that whether
25 you saw him again. I am asking, after the

1 HUDSON

2 accident did you speak to the Plaintiff?

3 A. No.

4 Q. He didn't tell you what
5 happened?

6 A. No. I didn't talk to him after
7 the accident. More than me concerned with
8 how he was doing and he barely couldn't
9 respond. I never really spoke.

10 Q. Did you speak to anyone else at
11 the scene about the accident?

12 A. Yes. Everybody was curious as
13 to what happened. So I went over and over
14 again what happened.

15 Q. When you went over and over
16 again, who did you speak to?

17 A. Well, different from the
18 workers that was there when Gus arrived. I
19 spoke to him and I explained what happened.

20 MR. BRIGANTIC: Strike that as
21 nonresponsive.

22 Q. When you say you went over and
23 over things, who did you speak to that was
24 there when the accident occurred?

25 A. Well, just the workers. Me and

HUDSON

the workers. For example, the guy I was working with say yesterday, I explained what happened. The other guys, some of them was working downstairs. When they come up, I explained to them what happened.

Q. But did you speak to the employees who were working in or around the Plaintiff?

A. I spoke to the person that was in the building. I was the only one right where the accident took place. So the commotion, everyone in the back, wherever they come forward to see what happened.

Q. When this accident occurred, you were the person closest to the accident?

A. Yes. I was ten feet away, this was closet and two electrical panels close by. I was working on one of them.

Q. Was anyone else in the immediate area?

A. Not to my knowledge. No. There was nobody else in the line of site or close by. Down the hall, in the

1 HUDSON

2 basement, they were working in the
3 building.

4 Q. To your knowledge, who took the
5 photograph of the boxes?

6 A. That I don't know.

7 MR. BRIGANTIC: I am going to
8 mark my own copy of the contract as
9 an exhibit. I will do a screen share
10 myself.

11 (Whereupon, the aforementioned
12 contract was marked as Defendant's
13 Exhibit A for identification as of
14 this date by the Reporter.)

15 Q. Mr. Hudson, do you see what I
16 put up on the --

17 A. Yes.

18 Q. Can you read for me what the
19 title of this document is?

20 A. Yes. Short form prime contract
21 between owner and contractor.

22 Q. So you see that. You read off
23 the title of the document.

24 Now, was your testimony you
25 never seen this document before; correct?

1 HUDSON

2 A. No, I never seen it before.

3 Q. In the second line down it says
4 it's a -- it's between A.S.K. Electric
5 Corp. that's your employer, right?

6 A. Yes.

7 Q. And Davs Partners LLC; correct?

8 A. Yes.

9 Q. So, it's between the owner and
10 A.S.K. Electric, correct?

11 A. Yes.

12 Q. A.S.K. Electrical?

13 A. Yes.

14 Q. So we're clear, the signature.
15 You see on the left Davs Partners, it's
16 signed by Vanessa Kleeman for Davs
17 Partners; correct?

18 A. Yes, I see that.

19 Q. You don't know who Vanessa
20 Kleeman is?

21 A. No.

22 Q. On behalf of A.S.K. Electrical
23 Corp., it was signed by David Kleeman, do
24 you see that?

25 A. Yes. On the right.

1 HUDSON

2 Q. So is there any signature here
3 of a guy by the name of Gus?

4 A. Yes, I do not see. The one
5 above it is not that clear. Yes. I don't
6 recognize no other signature by Gus.

7 Q. So it's between Dava Partners
8 LLC and A.S.K. Electrical Corp., right?

9 A. Yes.

10 Q. This is the prime contract;
11 correct?

12 A. Yes.

13 Q. You explained earlier what a
14 prime contract is; right?

15 A. Yes, I tried to. Yes.

16 Q. Doesn't this indicate to you
17 that A.S.K. Electrical was serving as the
18 general contractor?

19 MR. RICHMAN: Objection. You
20 are now being argumentative. Move
21 on.

22 MR. BRIGANTIC: Unless you are
23 instructing him not to answer.

24 MR. RICHMAN: I am objecting to
25 the question. You can answer if you

1 HUDSON

2 can. This has been asked several
3 times already. I am not going to go
4 too much further.

5 Q. You can answer, Mr. Hudson.

6 A. Repeat the question.

7 (Whereupon, the referred to
8 question was read back by the
9 Reporter.)

10 A. I'm not sure.

11 Q. Wouldn't it be fair to say you
12 don't know who the general contractor was
13 on this job?

14 MR. RICHMAN: Objection. You
15 already asked him who the general
16 contractor was.

17 MR. BRIGANTIC: This is a
18 different question. The objection is
19 noted.

20 Q. You can answer, Mr. Hudson.

21 MR. BRIGANTIC: Read that back.

22 (Whereupon, the referred to
23 question was read back by the
24 Reporter.)

25 A. Yes. Gus, general contractor.

HUDSON

1
2 Q. You just testified that you
3 don't know who the general contractor is;
4 correct?

5 MR. RICHMAN: Objection. He
6 did not say that.

7 A. I did not say that.

8 Q. What is your basis for the
9 assertion that Gus is the general
10 contractor?

11 A. Because when I got there Gus is
12 in charge of the project. So Gus doing
13 besides the electric, the AC and the
14 security, Gus is doing the entire project.
15 He is responsible for the project, for the
16 sheetrock, the general build out. The
17 general renovation.

18 Q. He was doing sheetrock?

19 A. Well, when I say sheetrock it's
20 part of the construction. You have floor,
21 sheetrock, you have the tiles. So he is
22 pretty much doing everything except the
23 electric.

24 Q. Let's just be clear. Gus had
25 nothing to do with the air conditioning?

1 HUDSON

2 A. No. It's a different crew to
3 do AC.

4 Q. Gus had nothing to do with the
5 electrical?

6 A. Nothing, nothing to do with
7 electrical.

8 Q. Gus had nothing to do with the
9 security?

10 A. No. Nothing to do with
11 security.

12 Q. But he had something to do with
13 other construction activities?

14 A. Yes. Yes. The rest of the
15 construction.

16 Q. What do you mean the rest of?
17 Did he do the plumbing?

18 A. No. No.

19 Q. He didn't do the plumbing
20 either, right?

21 A. No. He didn't do the plumbing.

22 Q. Did he do the demolition?

23 A. That I don't know. Because I
24 came there after the demolition was done,
25 framing was done. That's when I came

1 HUDSON

2 there. Any question about before, I don't
3 know.

4 Q. You don't know about the
5 demolition?

6 A. I don't know.

7 Q. Do you know whether he did the
8 framing?

9 A. I don't know exactly. The
10 framing was done when I got there. The
11 framing was done ready for us to work
12 there.

13 Q. So you don't know whether he
14 did the framing either, right?

15 A. No.

16 Q. Was there any work done on the
17 roof?

18 A. There was a unit going on the
19 roof. There was also -- putting on a new
20 tar, top on the roof.

21 Q. Who did the roofing?

22 A. Well, the guys, I don't know if
23 they are connected to George. They're
24 separate guys doing the exterior work. Not
25 connected to George.

1 HUDSON

2 Q. Who hired George?

3 MR. RICHMAN: If you know.

4 Q. Don't look at your lawyer for
5 your answer.

6 MR. RICHMAN: I don't want him
7 to guess. You're asking questions
8 that you already asked.

9 MR. BRIGANTIC: It's not clear
10 to me whether I got an answer.

11 Q. Who hired George?

12 A. I do not know.

13 Q. Would it surprise you to know
14 that A.S.K. Electric hired George?

15 MR. RICHMAN: Objection. Don't
16 answer that question. Don't answer
17 it. It's not a proper question. You
18 know that.

19 MR. BRIGANTIC: That's all
20 right. I will show him a document in
21 a second.

22 MR. RICHMAN: No. Showing him
23 a document doesn't give the answer to
24 a question. You asked the question
25 five times already. Enough is

1 HUDSON

2 enough.

3 MR. BRIGANTIC: I haven't used
4 a document before nor has the
5 Plaintiff. We're going to use the
6 document.

7 MR. RICHMAN: Go ahead.

8 Q. I am going to mark as Defendant
9 Kalnitech Exhibit B the subcontract between
10 A.S.K. Electric and Jim Associates. Have
11 you ever seen this document before?

12 (Whereupon, subcontract between
13 A.S.K. Electric and Jim Associates
14 was marked as Defendant's Exhibit B
15 for identification as of this date by
16 the Reporter.)

17 A. No.

18 Q. Prior to my showing this to
19 you, have you ever seen A.S.K. Electrical
20 contracting Corp. form of subcontract?

21 A. No.

22 Q. Are you in any way involved in
23 the sub contracts?

24 A. No.

25 Q. What does this say right under

1 HUDSON

2 A.S.K. Electrical Contracting Corp., what
3 is the title of this document?

4 A. Master subcontract agreement.

5 Q. I am going to scroll down and
6 you see identified as the subcontractor Jim
7 Associates? Do you see that?

8 A. Yes, I saw that.

9 Q. Do you see the name under there
10 identified as president Jorge Moscoso, do
11 you see that?

12 A. Yes.

13 Q. The contractor is identified as
14 A.S.K. Electrical contracting Corp., right?
15 Have you ever seen this work order form for
16 this project?

17 A. No. None of these forms, I
18 haven't seen them. The office deals with
19 all of this paperwork.

20 Q. It says the contract document.
21 Underneath contract documents it's signed
22 Jorge Moscoso on behalf of Jim Associates
23 and on the other side it's signed by A.S.K.
24 Electrical Contracting Corp. by David
25 Kleeman, do you see that?

1 HUDSON

2 A. Yes, I see it. I see that.

3 Q. Do you recognize Mr. Kleeman's
4 signature?

5 A. It looks different. I don't
6 recognize it right here. Based on the
7 documents you showed me before, it looks,
8 yes. I don't see his signature there.

9 Q. Does this document refresh your
10 recollection that you might have that it
11 was actually A.S.K. Electrical Contracting
12 Corp. --

13 A. No.

14 Q. You have to let me finish. Mr.
15 Hudson, does this refresh any recollection
16 that you might have that it was A.S.K.
17 Electrical Contracting Corp. and not Gus
18 who hired Jorge Moscoso?

19 A. No.

20 Q. You think it was your belief
21 that Gus hired Jorge Moscoso?

22 A. I don't know.

23 Q. You don't know, right?

24 A. I don't know.

25 Q. Do you know what a toolbox

1 HUDSON

2 meeting is?

3 A. Yes. It's called toolbox
4 talks.

5 Q. What is a toolbox meeting?

6 A. We go over various safety, with
7 all the tools that we use. We keep a
8 meeting, we go over and choose various
9 topics, tool safety. Accidents that can
10 cause using a particular tool. All to
11 prevent any such injuries from happening.

12 Q. When you are on a job site, do
13 toolbox meetings usually get held in the
14 mornings?

15 A. No. We normally do it once a
16 week. If we're in the city working once a
17 week, only for our workers, electrical. We
18 don't do it for the rest of the
19 contractors, the rest of the workers.

20 Q. Your answer was only with
21 respect to electrical workers?

22 A. Yes. Because if I am
23 responsible for the -- when I am
24 responsible for the guys working we only do
25 toolbox talks only for electric.

1 HUDSON

2 Q. To your knowledge, were there
3 toolbox meetings for the other workers?

4 A. I am not sure. I only focus on
5 me and my -- the workers that work with.

6 Q. Did you have workers working
7 under you?

8 A. Yes.

9 Q. How many workers did you have
10 working under you?

11 A. On a regular, I had one guy.
12 Me and him during the project.
13 Occasionally maybe we get an extra person
14 or two persons to come in. In the
15 beginning it was me and my helper and we do
16 the whole project.

17 Q. You would report to Mr.
18 Kleeman?

19 A. Yes. He pretty stopped by
20 almost as much as he can. On the way for
21 him going home he stopped by his office
22 quite often.

23 Q. What kind of work does Mr.
24 Kleeman do other than maybe owning Dava
25 Partners?

1 HUDSON

2 A. I don't know. I know he owns
3 A.S.K. Electric and I don't know what other
4 kind of work he does.

5 Q. To your knowledge, is Mr.
6 Kleeman a licensed electrician?

7 A. Yes.

8 Q. He is?

9 A. Yes.

10 Q. So do you know whether he has
11 knowledge of actually working on a job
12 site?

13 A. Yes, yes. He is very good. He
14 knows everything about a job.

15 Q. How frequently did he stop by
16 this work site?

17 A. If he is not busy sometimes for
18 the five days I might see him like three
19 days out of the five days.

20 Q. For the duration of the
21 project, on average, would he be at the
22 work site approximately three out of every
23 five days?

24 A. Yes.

25 Q. When he was on the job site,

1 HUDSON

2 what did he do?

3 A. He always doing something.
4 It's his own office. If he has to check in
5 something that he wants to be changed, he
6 will give instruction or if he decide to
7 work something like, for example, if they
8 were doing the cage, there is a cage with
9 all the security stuff in there. He come
10 and help us, set it up. He basically like,
11 I say it's his project and he will check
12 everybody. There was nobody off limits of
13 what is getting done. He is paying to get
14 it done. We pretty much have to do it to
15 his satisfaction.

16 Q. So he had supervisory authority
17 over the entire job site?

18 A. He owns the place. So, yes.

19 Q. Did he direct the work?

20 A. Well, he would give
21 instructions. For example, he tells me
22 what he wants to get done and I will do my
23 part and direct the workers that are
24 working underneath me. He tells the
25 general contractor what needs to get done.

1 HUDSON

2 They will do it.

3 Q. You keep referring to the
4 general contractor but you testified
5 earlier you don't know who that is.

6 MR. RICHMAN: He did testify
7 that ten times already. He said Gus
8 was the general contractor.

9 MR. BRIGANTIC: We established
10 after we looked at the document.

11 MR. RICHMAN: Bob, you showed
12 him a document. The document said
13 what it said. You asked him numerous
14 times who he believed the general
15 contractor was and he has said Gus.
16 So stop asking him the same question.

17 MR. BRIGANTIC: Stop
18 testifying.

19 MR. RICHMAN: I am not
20 testifying.

21 MR. BRIGANTIC: Stop with the
22 colloquy and stop testifying.

23 MR. RICHMAN: I am not
24 testifying.

25 MR. BRIGANTIC: I am not here

1 HUDSON

2 for your testimony. I am here for
3 the witness. May I proceed?

4 MR. RICHMAN: If you are not --
5 if you are going to ask the same
6 questions again.

7 MR. BRIGANTIC: I am not asking
8 the same questions. We are operating
9 now with respect to what David
10 Kleeman did on the work site. We
11 didn't talk about that so far this
12 morning. Let me move on.

13 Q. Mr. Hudson, who was in
14 charge -- when you are on a work site, do
15 you have to sequence the work?

16 A. Yes.

17 Q. What does that mean?

18 A. Meaning that you plan out the
19 day. You plan out what the workers to do.
20 Sometimes I am in charge of ten, 15 guys.
21 So I plan out the sequence. So when we
22 start in the morning everyone gets their
23 project. I team them up with who is going
24 to work and I send them out. As they go
25 along I check on them to see if they have

1 HUDSON

2 difficulties and assist. When all of that
3 is done I am working foreman. I go and
4 work and I do something. Still I keep an
5 eye and everything that is getting done.

6 Q. You sequence the work so it can
7 get done in an orderly fashion?

8 A. Yes. Plus we also have to meet
9 deadlines. We definitely have to plan it
10 out. If not it's going to be chaos, people
11 working on top of people and nothing is
12 going to get done.

13 Q. On this job site, was there
14 documents that set forth what the schedule
15 would be, how long each trade would be
16 there and what they will do?

17 A. I didn't see any documents that
18 showed that. All I know, he wants to move
19 into his new office. We try to get a
20 project done as perfect as possible and as
21 fast as I possible for him to move in.
22 Exact dates, no, I didn't see any documents
23 with exact dates.

24 Q. On this particular job site,
25 who was responsible for scheduling the

1 HUDSON

2 work?

3 A. David, he is responsible for
4 scheduling the work. I went there to do my
5 part and he would schedule with AC guy,
6 with the plumbers and like I say Gus always
7 pretty much there every day. So he know
8 what needs to get done from David.

9 Q. So David would instruct Gus
10 what to do?

11 A. Yes. Instruct all of us. It
12 could be something, for example, he tells
13 us Monday, he don't want to tell us again
14 and again. He tell us what needs to be
15 done. He come and observe and make sure
16 it's getting done.

17 Q. If there had to be a change
18 order David would have to approve that?

19 A. Well, in this case he just said
20 hey, I like that to be changed. It's not a
21 regular process of being in the city where
22 it's kind of major to work in a change
23 order. With him he say hey, I would like
24 for you to have an extra light in the
25 office. Just by saying it we do it. We

1 HUDSON

2 don't have to wait or get any other
3 approval. We do basically what he wants.

4 Q. So regardless of whether there
5 was the formality of the written change
6 order, David Kleeman would be the guy to
7 decide what he wanted done or not done?

8 A. Yes.

9 Q. He would confer with all the
10 trades, right?

11 A. Yes. He interacts with all of
12 us. He interact with me, Gus, the plumber.
13 He definitely interacted.

14 Q. After the accident occurred,
15 you never saw or talked to the Plaintiff
16 again, right?

17 A. No.

18 Q. Do you know if A.S.K.
19 Electrical conducted an investigation?

20 A. I do not know.

21 Q. Did this project have an
22 architect?

23 A. I do not know. I do not know
24 to be honest.

25 Q. Do you ever recall David

1 HUDSON

2 Kleeman being on the scene conferring with
3 an architect?

4 A. No.

5 Q. Did A.S.K. Electrical have a
6 project file?

7 A. I do not know.

8 Q. Did you ever see a project
9 file?

10 A. No.

11 Q. Did you personally, whether or
12 not there was a project file, did you work
13 with documents regarding this project?

14 A. Just the blueprint.

15 Q. Where was the blueprint kept?

16 A. I kept a blueprint by my box.

17 Q. Was there a blueprint available
18 for all the trades to refer to?

19 A. Yes. Yes. Everybody has their
20 print that they work off of, work with.

21 Q. Was it the same copy that you
22 used?

23 A. Well, they would have whatever
24 trade they are working. Mine I deal with
25 electrical and I kind of had everything.

1 HUDSON

2 But then they have to focus on if they do
3 the plumbing, they focus on the plumbing
4 drawing, the mechanical focus on mechanical
5 drawings. The general contractor focuses
6 on their build out.

7 Q. When you say you had
8 everything, what do you mean by that?

9 A. Well, the full set of drawings.
10 That shows everything.

11 Q. Did the other trades have a
12 full set of drawings?

13 A. Yes. Yes. They have their
14 drawings but they also have access to the
15 main big drawing that if they need to come
16 and take a look at something that they deal
17 with their part of work. It's there. They
18 also had their drawings. Some of them had
19 small printout of the same drawing. But
20 the big main one was there on the job site
21 for anybody to use.

22 Q. Was any equipment kept on-site
23 in the event that a trade wanted to use
24 equipment?

25 A. Yes. We have our own tools,

HUDSON

kept on-site. The contractor, they had their own tools. We only use what is provided by A.S.K. Electric and our own personal tools. The other trade, their boss supply them with the tools they need to get the job done.

Q. I understand that. What I am asking is, putting aside that the trades themselves might bring equipment onto the site for their own use, was there equipment at the job site for trades to use if they wanted to or if they needed to?

A. No. Only, like I said, stuff that they use it, whatever they provide for them. For us, whatever we need was provided for us. There was no equipment like any type of machine or anything that anybody could use. Whatever they using is specialized to that particular trade and to who was going to use it.

Q. Going back to the accident. Did you see the Plaintiff work on the ladder before he fell?

A. No, I did not.

HUDSON

Q. If you were going to work on this ladder in the position where it was, how would you properly use the ladder?

A. There is two ways he could have done it. You could -- it depends on the fact that the ladder -- the top of the ladder is actually pretty much the same height of the level where he was working. So it could definitely open the ladder, walk up and walk into the space or if he decided to lean the ladder up against it he has to make sure that it is something secure and they put the ladder so he doesn't slide out. So the proper way would be to always best to open the ladder. That's the proper way. It's designed to be opened up not leaned against. There are special ladders that lean up against the walls. It's designed to opened up, full extend out and you climb up onto it.

Q. When you say you open the ladder, you mean he has an A frame ladder you open both sides and it locks into place?

HUDSON

A. Yes. You open both sides and there are two supports, the left and right. You have to make sure those are fully extended before you actually climb on the ladders. Fully horizontal.

Q. Prior to this accident happening, you did not notice which way he was using the ladder?

A. I did not notice.

Q. If you had seen him on the ladder leaning up against the wall, would you have told him not to do it that way?

A. Yes, 100 percent.

Q. Why is that?

A. There is always a possibility. When you have it leaned up depending, because during the construction you have all kind of particles, dust, all of this stuff. When you lean up on the side there is always the risk of sliding from underneath you. There is always a risk.

Q. After the accident occurred, did you inspect to see whether the parts of the ladder, when you open it up, that lock

1 HUDSON

2 in place, whether that was working
3 properly?

4 A. Yes. It was working properly.

5 Q. Now, you said that at the top
6 of the ladder it was even with where that
7 opening was in the picture?

8 A. Yes. Approximately even with
9 where the opening is. It's a closet and
10 when you walk into the closet then you have
11 a little storage section on the left-hand
12 side that was framed out. Inside was
13 completely framed out. To access it you
14 have to climb on the ladder to climb into
15 the storage area.

16 Q. What was the purpose of that
17 little storage area?

18 A. Just extra storage for the
19 office. It's a big office. Extra storage
20 where they can store files or whatever they
21 want to store it. Try to utilize as much
22 space as possible.

23 Q. At the time the Plaintiff was
24 injured, what was he doing in that area?

25 A. I don't know exactly what he

HUDSON

was doing. I know to finish up inside there the plywood was laid down and everything. Pretty much finish up. You have to sheetrock, plaster and maybe finish it and installing the doors. I don't know exactly what it was but it was something that has to do with inside the storage area that I believe he was working on.

Q. To your knowledge, was the Plaintiff wearing a tool belt when he was injured?

A. Well, no. I don't know. When he fall down I didn't see a tool belt or anything. I couldn't answer that whether he was wearing a tool belt.

Q. To your knowledge, was he wearing a harness?

A. No harness.

Q. There was no one else around him within his vicinity?

A. No. It was just me working at the panel and he was by the closet.

Q. Let me make a five minute break, see whether I have anything at this

1 HUDSON

2 moment.

3 A. Thank you.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 Q. Mr. Hudson, it's my
7 understanding that you would either like to
8 revise or extend your answer to a
9 particular question. Go ahead and do that
10 if you would like.

11 A. Okay. Yes. So if you guys
12 remember when I said I didn't see exactly
13 how he had the ladder when he went into the
14 storage area to work. But I heard, when I
15 heard the sound I turned around and I saw
16 him falling down. I said the ladder was
17 open but now I am really thinking about it.
18 There is no way he could have fallen if the
19 ladder was open. He had to have the ladder
20 closed and lean upright above the opening.
21 The opening below the storage area.

22 MR. RICHMAN: Can we call the
23 open area the cubby?

24 A. The cubby.

25 Q. So it's your belief that he did

1 HUDSON

2 not have the ladder open but that it was
3 leaning up against a wall?

4 A. Yes. I am not sure how he had
5 it. That's the only way he would be able
6 to fall the way he fall. He had to have it
7 leaned up against the cubby.

8 Q. After the accident, you said
9 you inspected the ladder, did you look at
10 the feet of the ladder?

11 A. Yes. I did inspection, I look
12 at the ladder to see any defects, any
13 issues with the ladder.

14 Q. Can describe what the feet, the
15 bottom part of this ladder is in terms of
16 the feet of the ladder?

17 A. All ladders have like a rubber.
18 It has a rubber insulation. A fiberglass
19 ladder. Fiberglass and rubber feet at the
20 bottom.

21 Q. This one did?

22 A. I don't remember 100 percent.
23 It's been a long time ago. I don't
24 remember if this one had. All I know is I
25 did not see any issues with the ladder. I

HUDSON

am assuming it had. I didn't see any issues or anything that arise any suspicion that maybe the ladder was defective why it fall. The ladder was in good condition.

Q. Now as I understand your testimony, you had to make a phone call. Mr. Kleeman was not at the site when this accident occurred?

A. No, he was not.

Q. Did he come to the scene, to the work site on the same day later?

A. No. He was away somewhere. I don't know if he was hunting or fishing, he was away somewhere. He did not come the site the same day of the accident.

Q. How soon after the accident did he then come back to the work site?

A. I don't remember exactly but I know it was as soon as possible. But whatever he was doing he came back as soon as possible. I don't remember the exact time or so when he came back. I know he came back as soon as possible.

Q. Was it the next day?

1 HUDSON

2 A. I don't remember to be honest.
3 I don't remember if it was the next day.

4 Q. When he did come back, the next
5 time that he came back to the work site,
6 after the accident, did he do any
7 inspection or investigation?

8 A. Well, he asked me what happened
9 and he look and I showed him where the
10 accident occurred and he basically just
11 checked. Checked to see exactly based on
12 whatever I told him that happened. Based
13 on whatever he heard from what I told Gus
14 about the accident which is the same thing
15 I told him what happened.

16 Q. Do you know what a waiver of
17 lien is?

18 A. It's when somebody wants -- a
19 waiver of lien, that's when you restrict
20 somebody from -- for example, if you are
21 finishing up the a project and somebody
22 owes somebody money. You can issue a
23 waiver of lien against that property.

24 Q. Isn't it where if you do work
25 on a job site and you get paid you waive

1 HUDSON

2 any continuing lien, right?

3 A. Not sure. I am not sure.

4 Q. Have you ever seen a waiver of
5 lien?

6 A. If what?

7 Q. Have you ever seen a waiver of
8 lien?

9 A. No, never seen.

10 Q. Have you ever signed one?

11 A. No.

12 MR. BRIGANTIC: I am going to
13 show you Defendant's Exhibit C. Did
14 you see what I put up on the screen?

15 A. Yes.

16 Q. Can you read off the very top
17 line which is the title of the document?

18 A. Final combined waiver of lien
19 and general release.

20 (Whereupon, the aforementioned
21 waiver of lien was marked as
22 Defendant's Exhibit C for
23 identification as of this date by the
24 Reporter.)

25 A. To whom it may concern.

HUDSON

Q. You never seen this document before?

A. No.

Q. This refers to Jim Associates Corp. having been employed by A.S.K. Electrical Corp. to furnish labor and/or materials for the building at 217-14 Hempstead Avenue, Queens. Do you see that in the first paragraph?

A. Yes. I just read it.

Q. Does this refresh any recollection you might have, whether it was A.S.K. Electrical that hired Jim Associates?

A. No. In terms of the paperwork I never seen the paperwork that dealt with the project. Only paperwork I deal with the prints that they gave me to proceed with the build out for the electric.

Q. There is a paragraph that starts now, do you see that paragraph?

A. Yes.

Q. The next paragraph after that is whereas. Do you see that?

HUDSON

A. Yes.

Q. Can you read for me what the first sentence in that whereas paragraph?

A. Whereas Jim Associates Corp. the undersigned, as releasor, successors and assigns, in consideration of \$62,891 total cumulative dollars and other goods and valuable consideration, has released and does release and forever discharge Davs Partners the owner and A.S.K. Electrical Corp., general contractor, collectively referred to herein as the releases and each of the respective releases, shareholders, officers, directors, employees, agents, representatives, successors and assigns from all actions, causes of actions, sums of money, or any other liability arising out of or in connection with the project and work contracted for and demands whatsoever, in law, admiralty or equity, which against either or both of the releasees.

Q. That's the first sentence. You can stop there.

HUDSON

A. Okay.

Q. You would agree with me that this waiver of lien refers to Davs Partners LLC as the owner and A.S.K. Electrical Corp. as the general contractor; correct?

A. I do not want to say. Even though I read it, I do not want to say. I still think this is something that should definitely be between the lawyer and you guys. I do not want to give any statement based on these documents which I am seeing right now.

Q. I'm sorry, Mr. Hudson. That is not responsive to my question. All my question is would you agree with me that the waiver of lien refers to Davs Partners LLC as the owner?

A. Yes.

Q. And A.S.K. Electrical as the general contractor?

A. Yes. It said it on the document.

Q. Okay. Does this refresh your recollection you might have that it was

HUDSON

actually A.S.K. Electrical Corp. that was the general contractor?

A. No. Not based on this document. I know that -- like I said I work for A.S.K.

It was their project that I'm doing.

MR. BRIGANTIC: That's all I have subject to any follow-up to anything else that anyone else may have. Thank you, Mr. Hudson.

MR. KLEIN: I have a few follow-up.

EXAMINATION BY

MR. KLEIN:

Q. Sir, when you began working on the morning of the accident, was the worker who was involved in the accident, was he already working?

A. No.

Q. Did you see him bring the ladder up into that cubbyhole area that we described?

A. No.

1 HUDSON

2 Q. When did you first become aware
3 that he was working in that area?

4 A. When I start -- when I started
5 working on the panel I only became aware of
6 it when I heard the noise from the whole
7 tumbling.

8 Q. So you only became aware that
9 he was working in that cubbyhole area after
10 you heard a noise?

11 A. Yes.

12 Q. Which you later found out to be
13 the accident?

14 A. Yes. I heard the noise. I
15 turned my head to the left and I saw him
16 coming down. If it was a case where I
17 noticed any -- if I go there physically to
18 check and I see and I notice anything that
19 was wrong or saw something incorrectly I
20 would definitely fix the issue to prevent
21 accident. It's always good to have an
22 accident free environment.

23 Q. So you never saw him before you
24 heard that noise; is that correct?

25 A. No.

HUDSON

Q. What was the size of the cubbyhole area?

A. I would say, roughly say about five feet by five feet. Five feet.

Q. Five feet by five feet square?

A. Yes.

Q. Are you saying that a six foot A frame ladder cannot have been set up in that area fully opened?

MR. BRIGANTIC: Objection to the form of the question. He can answer.

A. Yes. If it was fully opened it created a distance between him and the cubby. But he probably had it turned the other way. Maybe if say he was to face the ladder and outside and maybe climb up on the side but there is no way if he have it fully open it creates a gap. If he climb up to go to the cubby and fully open, you create a gap distance between the safe landing of the cubby and the top of the ladder. It definitely would be a wrong way to have it opened to climb in there.

1 HUDSON

2 Q. Could you bring up Exhibit 6
3 please. You see that red toolbox?

4 A. Yes.

5 Q. Going inside that space, is
6 that where the cubbyhole area is?

7 A. Is there anyway you can zoom
8 out?

9 Q. Where is the cubbyhole. Is it
10 where --

11 A. Sorry. If I am standing in the
12 closet, the cubby is on the left-hand side.

13 Q. Where is the closet? Is it
14 where his head is, the worker on the floor
15 head or in the area where that red toolbox
16 is?

17 A. No. It's where the red toolbox
18 is and the ladder is inside the closet.

19 Q. There is no door or anything
20 closing off that cubbyhole area; correct,
21 it's an open entranceway in there?

22 A. It was actually on the
23 construction. Eventually there would be a
24 door installed to close it off.

25 Q. But at the time of the accident

1 HUDSON

2 there was no door there; correct?

3 A. No.

4 Q. You don't know if he was
5 working in the hole in the wall or if he
6 was working by standing on the ladder;
7 correct?

8 A. Based on how I see him coming
9 down, he had to be working inside the hole
10 and -- based on how he fell, he had to be
11 working inside the cubbyhole and up and
12 exiting the hole. That's when the whole
13 accident occurred. Based on how I saw him
14 falling.

15 Q. Before he fell, did you
16 actually see him place one of his feet on
17 the ladder, yes or --

18 A. No.

19 Q. Did you ever see him place any
20 feet on top of the ladder, yes or no?

21 A. No.

22 Q. When you saw him for the very
23 first time, tell me where his feet were.

24 A. He came down head first. So
25 the cubby is on the left-hand side. He

1 HUDSON

2 came tumbling down head first on the
3 right-hand side.

4 Q. Where were his feet when you
5 first saw him?

6 A. His feet were facing towards
7 the cubby on the left-hand side.

8 Q. When you saw the ladder at that
9 time, was it opened or closed?

10 A. The ladder was, it had to be
11 closed. It had to be closed.

12 Q. Not what it had to be. When
13 you saw it was it opened or closed?

14 A. Closed.

15 MR. RICHMAN: Hold on. For the
16 record when you say closed, does that
17 mean the A frame is not A frame or it
18 means something else?

19 A. It would be closed being
20 exactly how you see the ladder right there.
21 Like folded in. That I consider it closed.

22 MR. RICHMAN: Just to clarify
23 for the record. The way that you see
24 the ladder now is what you are
25 referring to as a closed ladder;

HUDSON

correct.

A. Yes.

Q. To your understanding, what was the reason he would use the ladder in a closed position like that?

A. Well, to get inside the cubby. The cubby is probably approximately, I would say, almost six feet high. You need a ladder to get inside the cubby.

Q. If the ladder was placed sideways along the opening, wouldn't he be able to get into the opening that way?

A. Yes. Yes. You would be able to.

Q. You didn't see him get into the opening; correct?

A. No. I didn't see him get into the opening.

Q. You didn't see him get out of the opening?

A. No. Just when he tumbling, coming down.

Q. You believe that using a ladder in a closed position is an improper use of

1 HUDSON

2 a ladder; correct?

3 A. If you don't have the right
4 type of ladder. We all do it on-site but
5 it's not recommended if you don't have the
6 proper type. Depending on certain place
7 you're working you need various different
8 size ladders.

9 Q. Would the ladder that is shown
10 in the photograph Exhibit 6 would be the
11 proper ladder to use under those
12 circumstances?

13 A. I would recommend a shorter
14 ladder.

15 Q. But if there was no shorter
16 ladder available, could the ladder shown in
17 this Exhibit 6 have been used?

18 A. Yes. It could be used. They
19 had to be careful. Properly set it up.

20 Q. In a closed position though?

21 A. Yes. Yes. There is always a
22 risk. The way the ladder is right there,
23 there is always a risk whenever you use a
24 ladder like that.

25 Q. But it could be used that way;

1 HUDSON

2 correct?

3 A. Yes. In cases where you do use
4 it that way, they do not recommend it.

5 Q. Now, who did you tell about the
6 accident again?

7 A. I told David Kleeman which is
8 my boss. I said on the phone about the
9 accident, I called Gus. I told him what
10 happened.

11 Q. Did you tell him that you saw
12 the ladder in a closed position?

13 A. No. I didn't tell him that I
14 saw the ladder in a closed position.

15 Q. Why didn't you tell him you saw
16 the ladder in a closed position?

17 A. No. The reason -- no. The
18 thing I am saying is, I only -- I know they
19 keep asking me before. I know this whole
20 thing, you keep asking me before how he had
21 it before. I pretty much saw when the
22 whole thing, when he is tumbling over. So
23 the ladder was closed. But as how before,
24 I don't know how he had it before or how it
25 was cleaned up before. The way you are

HUDSON

looking at the ladder right now, the ladder was tumbled over on top of him. So the way it is positioned right now, it's moved.

Q. Did you tell David Kleeman that you saw the ladder in a closed position after the accident, yes or no?

A. Yes. I told him I saw it in a closed position.

Q. So that would be something that would be included in an accident report because you would consider that something important; correct?

A. Yes. Like I said I explained to them what happened. Exactly what happened and if there was paperwork I was filling out or signed, that would be something that would be included in an accident report.

Q. Were there any shorter ladders available for the worker to use?

A. I do not know. His boss provided him with all the stuff that they need and for us, we didn't have a shorter ladder there for him to use. He was using

HUDSON

his company ladder. So I don't know if they had a shorter one for him to use.

MR. KLEIN: Thank you very much, sir. Nothing further.

MR. BRIGANTIC: I have a very brief follow-up.

EXAMINATION BY

MR. BRIGANTIC:

Q. Mr. Hudson, after the accident happened, where was the ladder?

A. The ladder, just how you see the ladder. The ladder was taken off of him and they leave the ladder off.

Q. So right after the accident occurred, the ladder was laying on top of the Plaintiff?

A. Yes. The him, the ladder, everything was tumbled down to the right of the closet.

Q. Somebody picked up that ladder and put it up against the wall?

A. It is naturally -- we pick the ladder up off of him. I can't tell you the way -- the way it's positioned right now.

1 HUDSON

2 If somebody purposely put it that side, the
3 ladder was taken up off of him.

4 Q. Who did that?

5 A. There was other workers who run
6 and came right when the whole thing
7 happened. I was more concerned because I
8 saw the blood coming from his face. I was
9 more concerned if he is okay while calling
10 for the ambulance. Calling 911 to make
11 sure to get help.

12 Q. Were they the coworkers of the
13 Plaintiff?

14 A. Yes.

15 Q. Do you know whether they spoke
16 to the Plaintiff before they picked up the
17 ladder off of him?

18 A. No. Everybody was trying to
19 find out, make sure he is okay. They
20 trying to talk to him, make sure he is
21 okay.

22 Q. Do you happen to know whose
23 legs are in that photograph?

24 A. That's one of the co-workers
25 that work with the Plaintiff on the ground.

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HUDSON

You can tell he has like the same piece of
the T-shirt.

Q. I am asking, do you happen to
know the name of that person?

A. No.

MR. BRIGANTIC: That's all I
have. Thank you.

(Whereupon, at 2:00 p.m., the
Examination of this witness was
concluded.)

° ° ° °

HUDSON

D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

DWAYNE HUDSON

Subscribed and sworn to before me
this ____ day of _____ 20__.

NOTARY PUBLIC

HUDSON

E X H I B I T S

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| Exh 1 | contract | 17 |
| Exh 2 | proposal | 19 |
| Exh 3 | proposal dated June 12, 2019 | 21 |
| Exh 4 | proposal dated June 26, 2019 | 22 |
| Exh 5 | photograph | 34 |
| Exh 6 | photograph | 34 |
| Exh 7 | piece of paper was deemed | 8 |

(Exhibits retained by court reporter)

DEFENDANT'S EXHIBITS

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|-------------------|------------------------|------|
| A | contract | 72 |
| B | subcontract | 80 |
| C | waiver of lien | 103 |

(Exhibits retained by Counsel.)

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| QUESTIONS MARKED FOR RULINGS | |
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HUDSON

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF SUFFOLK)

I, AILEEN KOVEN, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of April 2022.



AILEEN KOVEN

ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Reyes Espinoza, Stalin Rodrigo v. DAVS Partners LLC Et Al.

DATE OF DEPOSITION: 4/11/2022

WITNESSES' NAME: Dwayne Hudson

[illegible]

Dwayne Hudson

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 20__.

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

[& - aforementioned]

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New York Code
Civil Practice Law and Rules
Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- - - - -x

STALIN RODRIGO REYES ESPINOZA,

Plaintiff,

-against-

DAVS PARTNERS LLC AND KALNITECH
CONSTRUCTION COMPANY,

Defendants.

- - - - -x

Veritext Virtual

November 17, 2021

12:11 p.m.

EXAMINATION BEFORE TRIAL of STALIN
RODRIGO REYES ESPINOZA, the Plaintiff in
the above-entitled action, held at the
above time and place, taken before Carol
Ellinghaus, a Notary Public of the State
of New York, pursuant to an Order and
stipulations between Counsel.

* * *

1
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Spanish Interpreter

17 Nora Youmans,

Spanish Interpreter

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STIPULATIONS

IT IS HEREBY STIPULATED, by and among the attorneys for the respective parties hereto, that:

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R., and shall be

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controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * *

1
2 MR. RICHMAN: It is my
3 understanding that our conversation
4 with counsel for Kalnitech and counsel
5 for the plaintiff, have stipulated
6 that the plaintiff is being produced
7 here today for a deposition on the
8 issue of liability only.

9 After that counsel will confer
10 with each other to establishing a
11 continuation of the plaintiff's
12 deposition for damages and I, on
13 behalf of A.S.K. Electric, will
14 produce documents that were subpoenaed
15 by Kalnitech's counsel and that
16 plaintiff's counsel will consider
17 whether or not based upon that
18 production, to bring in as a party
19 defendant A.S.K. Electric and that
20 will give the ability of A.S.K.
21 Electric to bring in as third-party
22 Jim, which apparently was a
23 subcontractor subcontractor of A.S.K.
24 Electric so that everything can be in
25 this case and properly the subject of

1
2 the litigation and the issues so that
3 everything can be considered and
4 resolved.

5 MR. TURCO: We agree to produce
6 our client for a subsequent
7 supplemental deposition with regard to
8 the damages only, and we will also
9 work with counsel and Court for a
10 mutually convenient date for our
11 client's damages deposition.

12 I would also like to state that
13 my client's deposition was adjourned
14 over three times at the request of
15 defendants. We have complied with
16 providing all medical authorizations
17 with regards to all treatment
18 regarding this accident. We have
19 complied with all Court Orders to-date
20 and as of the date of this deposition,
21 we have not received one piece of
22 discovery from either attorney from
23 Davs Partners or attorney for
24 Kalnitech, despite several Court
25 Orders, the last one being September

1
2 10, 2021, which also directed
3 defendants to respond to our Combined
4 Demands on or before October 28, 2021,
5 and we still have not received same.

6 However, there were several
7 Court Orders that were not complied
8 with. Nonetheless, we are here with
9 our client and ready to proceed.

10 MR. BRIGANTIC: If I may, I am
11 agreeing to go forward with this
12 deposition only because our call to
13 the court for judicial intervention
14 has not resulted in Judge Landicino
15 being able to hear from us.

16 It is my understanding as of the
17 time this deposition is being started,
18 Judge Landicino's law clerk is
19 attempting to get Judge Landicino and
20 explain to him what the issue is and
21 perhaps have judicial intervention. I
22 am going forward today, only over
23 objection.

24 I also object to the fact that
25 prior to today and not until yesterday

1
2 that the plaintiff produced over one
3 hundred pages of documents yesterday
4 afternoon at 3:30 in the afternoon
5 when I wasn't in the office, which I
6 have not been able to review.

7 Therefore, when the plaintiff
8 says they are in the compliance with
9 the Order, it's only because the
10 documents were produced yesterday
11 afternoon at 3:30.

12 There is no procedure in the
13 Compliance Conference Order or the
14 CPLR that permits a plaintiff to
15 demand their deposition partially on
16 several issues only. I have asked for
17 where did the authority for doing this
18 exist and I have received no response
19 from plaintiff's office.

20 The attempt to limit this
21 deposition and bifurcate it is nowhere
22 permitted in the orders or the CPLR as
23 I see it. But we will go forward
24 simply because the witness is here and
25 it is with our objection.

1
2 I would like to point out with
3 respect to the documents that we need
4 in order to adequately depose this
5 witness, Davs Partners, who is the
6 owner of this project and property in
7 a labor law case, has produced nothing
8 and they indicate to me that they have
9 no documents because the real party
10 and interest who is not a party to the
11 litigation is A.S.K. Electric, who
12 subcontracted with both my client,
13 Kalnitech, and also subcontracted with
14 the Plaintiff's employer, Jim
15 Associates.

16 Prior to this deposition, I
17 subpoenaed documents from A.S.K.
18 Electric and I was told before the
19 return date of that deposition by
20 Mr. Richman, that he represents A.S.K.
21 Electric and the documents will be
22 provided by the return date. The
23 return date went, it passed. A.S.K.
24 Electric has not produced the
25 documents. When I asked yesterday

1
2 what the status of that production
3 was, I was told that the client still
4 hadn't supplied the documents to
5 Mr. Richmond's office even for review.

6 Why I am being compelled to go
7 forward with the deposition of the
8 plaintiff when the real party and
9 interest, the GC who also has some
10 co-existing relationship with the
11 owner of this project resulting in the
12 production of no documents at all, is
13 not appropriate or proper.

14 As far as production of
15 documents, I subpoenaed documents from
16 the plaintiff's employer and I did
17 provide those documents to the
18 plaintiff's office.

19 If we are in default of any
20 discovery obligations, I will correct
21 those. The fact that written
22 discovery has not been completed, has
23 been on all sides and even the
24 plaintiff just produced a ton of
25 documents yesterday late afternoon.

1
2 That is why I am doing this but
3 I am doing it over objection,
4 reserving the right to seek any relief
5 that may be appropriate.

6 MR. TURCO: Let the record
7 reflect, that Mr. Brigantic's
8 soliloquy is ripe with inadequacies --

9 MR. BRIGANTIC: I did not insult
10 you or call you names or anything
11 else. It is inappropriate, Counsel.

12 MR. TURCO: You are also yelling
13 now.

14 MR. BRIGANTIC: I am not
15 yelling.

16 MR. TURCO: You are also making
17 misrepresentations. For the record,
18 we have not received your response to
19 the Preliminary Conference Order, we
20 have not received your response from
21 your office to the Compliance
22 Conference Order, and we have not
23 received a response from your office
24 to the final preconference and we did
25 provide authorizations for medical and

1
2 treatment to your office in 2019.

3 So we are actually in full
4 compliance with all discovery, so that
5 portion of your record is inaccurate.

6 We, as a courtesy, forwarded you
7 copies of medical records that you
8 have not received directly from the
9 providers yet yesterday. We did not
10 release documents that we were Court
11 Ordered to exchange. We, as a
12 courtesy, provided your office with
13 medical records further as a courtesy.

14 In addition to the three or four
15 adjournments of my client's
16 deposition, we advised you that since
17 you did not have all the medical
18 records directly from the providers,
19 as a courtesy we would produce our
20 client more than once and we would
21 produce him solely for the issue of
22 liability, which is what I put on the
23 record today.

24 So despite your representations,
25 that is inaccurate. It was Court

1
2 Ordered depositions for my client. If
3 you would like to proceed with the
4 entirety of my client's deposition
5 today, I'll not produce him on a
6 separate date. If you do not want the
7 courtesy of two separate depositions,
8 then we will continue to the end of
9 the day, you will get your time, and
10 that is that.

11 MR. BRIGANTIC: You already
12 stipulated it was a liability
13 deposition only. You already agreed
14 to bring him back on damages. I am
15 only stating that the liability
16 portion is going forward over my
17 objection for the reasons stated.

18 MR. RICHMAN: Let's move
19 forward.

20 THE COURT REPORTER: Would you
21 like a copy of the transcript,
22 Counselor?

23 MR. BRIGANTIC: Absolutely.
24
25

1 S. Espinoza

2 D A N I E L R O D R I G U E Z,

3 The interpreter, having first been duly
4 sworn by the Notary Public, interpreted
5 from English to Spanish and from Spanish
6 to English to the best of his ability, as
7 follows:

8 S T A L I N R O D R I G O R E Y E S
9 E S P I N O Z A,

10 the Witness herein, having first been
11 duly sworn by the Notary Public, was
12 examined and testified as follows:

13 EXAMINATION BY

14 MR. RICHMAN:

15 Q. What is your name?

16 A. Stalin Rodrigo Reyes Espinoza.

17 Q. Where do you reside?

18 A. 151 Avenue O, Apartment B3,
19 Brooklyn, New York 11204.

20 MR. BRIGANTIC: When the
21 plaintiff is brought back, will he be
22 brought back before or after the
23 defendants are deposed?

24 MR. TURCO: Before. Assuming
25 Keith doesn't want to produce out of

1 S. Espinoza

2 order.

3 MR. RICHMAN: Right.

4 Good afternoon. My name is
5 Keith Richman. I am an attorney and
6 my client is Davs Partners, LLC.

7 Davs Partners, LLC is a
8 defendant in this lawsuit and you are
9 the plaintiff; is that correct?

10 THE WITNESS: [Not responding.]

11 MR. RICHMAN: Repeat the
12 question, Danny.

13 MR. TURCO: Please read it back.

14 [The requested portion of the
15 record was read.]

16 THE WITNESS: Yes.

17 MR. RICHMAN: Sir, first of all,
18 I want to make sure that you
19 understand the interpreter and the
20 translation. If you have trouble
21 understanding the translation today,
22 please let me know.

23 Okay?

24 THE WITNESS: Yes, I understand.

25 MR. RICHMAN: I am going to be

1 S. Espinoza

2 asking questions in English. The
3 interpreter will interpret that into
4 Spanish and you are going to give all
5 your answers in Spanish.

6 Is that acceptable to you?

7 THE WITNESS: I agree.

8 MR. RICHMAN: Please wait until
9 the interpreter asks the question to
10 you and please answer all of your
11 questions verbally. The interpreter
12 and the court reporter cannot take
13 down any hand gestures or nods of the
14 head.

15 Do you understand that?

16 THE WITNESS: I understand.

17 MR. RICHMAN: When a question is
18 asked of you, please do not guess or
19 give any approximations to the answers
20 to the questions and please if you do
21 not know the answer, please respond by
22 saying you don't know or you don't
23 understand the question.

24 THE WITNESS: I understand.

25 Q. What is your full name?

1 S. Espinoza

2 A. Stalin Rodrigo Reyes Espinoza.

3 Q. Have you ever been known by any
4 other names?

5 A. No.

6 Q. What is your current address?

7 A. 151 Avenue O, Apartment B3,
8 Brooklyn, New York.

9 Q. How long have you lived there?

10 A. Approximately around two to
11 three years.

12 Q. Is that an apartment building or
13 is that an apartment as part of a house?

14 A. An apartment of a building.

15 Q. Who do you live there with?

16 A. With my brothers.

17 THE INTERPRETER: I have to ask
18 him to clarify if it's singular or
19 plural.

20 A. With a brother and the others
21 ones, I just know them.

22 Q. What is your brother's name?

23 A. Manuel Euclides Espinoza.

24 Q. How long have you been living
25 with your brother?

1 S. Espinoza

2 A. Since I arrived.

3 Q. The day you arrived from where?

4 A. From Ecuador.

5 Q. Before you were living in this
6 apartment --

7 [Telephone interruption.]

8 MR. BRIGANTIC: I need to take
9 that. It's the call from the Court.

10 [A pause in the proceedings.]

11 MR. BRIGANTIC: I just got a
12 call back from the law clerk Steven
13 Burseio [phonetically]. He wants us
14 to set up a conference call with him.

15 MR. RICHMAN: Please read back
16 the last question and answer.

17 [The requested portion of the
18 record was read.]

19 Q. Sir, before you came to the
20 United States, you were living in Ecuador;
21 correct?

22 A. Yes.

23 Q. What is the date that you moved
24 to the United States?

25 A. I came the 30th of July in 2018.

1 S. Espinoza

2 Q. When you came to the United
3 States, did you come as a visitor or did
4 you obtain a work visa?

5 A. No.

6 Q. You are not understanding the
7 question.

8 When you first came to the
9 United States, did you come as a visitor
10 or something else?

11 A. No.

12 MR. BRIGANTIC: It's not
13 responsive.

14 MR. TURCO: Do you understand
15 the question?

16 When you first came to the
17 United States, did you come as a
18 visitor?

19 THE WITNESS: No.

20 MR. TURCO: Did you come here to
21 work?

22 THE WITNESS: Can you please
23 repeat.

24 Q. When you first came to the
25 United States, did you come here to be

1 S. Espinoza

2 employed?

3 A. I came to work.

4 Q. When you came to the United
5 States on July 30 of 2018, who did you
6 come here with, if anyone?

7 A. I came alone.

8 Q. After you came to the United
9 States, did there come a time after you
10 arrived in the United States, that your
11 brother came to the United States?

12 A. Yes.

13 Q. When did your brother arrive,
14 the brother you are now living in your
15 apartment with?

16 A. I arrived to where my brother
17 lives with him.

18 MR. TURCO: The question was did
19 your brother come after you?

20 When did your brother come?

21 THE WITNESS: He came some
22 further time ago.

23 Q. When you first came to the
24 United States, where did you live?

25 A. Approximately around Avenue U

1 S. Espinoza

2 but I don't remember exactly.

3 Q. Who did you live with when you
4 first came to the United States?

5 A. Can you please repeat because I
6 did not understand.

7 MR. RICHMAN: Please read it
8 back.

9 [The requested portion of the
10 record was read.]

11 A. I found or I got together with
12 my brother and I stayed to live with him.

13 Q. I thought your brother came to
14 the United States after you arrived in the
15 United States; is that correct?

16 A. No. He was already living here.

17 Q. When you first came to the
18 United States, you moved in with your
19 brother; correct?

20 A. Yes.

21 Q. When you first came to the
22 United States, was your brother employed?

23 A. Yes.

24 Q. What did he do?

25 A. Construction.

1 S. Espinoza

2 Q. Who did he work for?

3 A. I have no idea.

4 Q. When you first arrived here, did
5 you seek employment or did you have
6 employment arranged before you the came to
7 the United States?

8 A. When I arrived I looked for
9 work.

10 Q. How did you look for work?

11 A. It was through people that I
12 know.

13 Q. What kind of work did you look
14 for?

15 A. Construction.

16 Q. When is the first time that you
17 became employed in the United States after
18 you arrived?

19 A. Close to the 4th of October when
20 I came.

21 Q. That is October 4, 2018?

22 A. Yes.

23 Q. What was your first employment?

24 A. Construction.

25 Q. Who were you employed by?

1 S. Espinoza

2 A. Can you please repeat.

3 Q. Who were you employed by?

4 A. I don't know the exact name.

5 Q. Was it a company or an
6 individual or something else?

7 A. I don't know exactly what kind
8 of company it was or nothing.

9 Q. Do you know where the company
10 was located?

11 A. I was just taken there to go
12 work. I don't know nothing else.

13 Q. Were you paid money for your
14 employment?

15 A. I did not understand.

16 Q. Did you get paid a salary for
17 working at your first employment?

18 A. Yes.

19 Q. How much?

20 A. Around six hundred.

21 Q. That is \$600 per week?

22 A. Yes.

23 Q. How many hours did you work?

24 A. I don't know exactly.

25 Q. Was it more than forty hours a

1 S. Espinoza

2 week, if you know?

3 THE INTERPRETER: I am asking
4 him to repeat and speak louder.

5 A. Eight hours daily.

6 Q. How many days a week?

7 A. Five.

8 Q. What kind of construction work
9 did you do?

10 A. Laborer.

11 Q. Can you describe exactly the
12 kind of work you did as a laborer?

13 A. I used to do everything.

14 Q. Can you itemize for me what you
15 mean by you did everything?

16 A. I would sweep, I would take down
17 the sheetrock from the truck, I would be
18 helping the foreman, and go pick up the
19 food.

20 Q. Anything else?

21 A. Sometimes I would place
22 sheetrocks [sic].

23 Q. How long did you --

24 MR. RICHMAN: Withdrawn.

25 Q. Do you know the names of any of

1 S. Espinoza

2 the people that you work with at this
3 company or person as a laborer?

4 A. No, because I did not know all
5 of them.

6 Q. Do you have any records that you
7 could produce indicating the names of any
8 of the individuals or companies that you
9 worked for at this time?

10 A. No.

11 Q. Did you get paid by cash or
12 check?

13 A. Check.

14 Q. Do you have copies of any of
15 your paychecks?

16 A. No.

17 MR. BRIGANTIC: Can I ask is
18 there a lost wage claim.

19 MR. TURCO: Yes, there is.

20 MR. RICHMAN: Yes, there is.

21 MR. BRIGANTIC: Thank you,
22 sorry.

23 MR. TURCO: Did you need copies
24 of his paychecks from 2018?

25 MR. RICHMAN: No.

1 S. Espinoza

2 Q. For how long a period of time,
3 did you work for this person or company,
4 from October 4, 2018 until when?

5 A. I don't remember exactly.

6 Q. Approximately how long?

7 A. I can't recall.

8 Q. Was it more than a month?

9 A. Yes.

10 Q. Was it more than two months?

11 A. Yes.

12 Q. More than three months?

13 A. Yes.

14 Q. More than six months?

15 A. Somewhere around there.

16 Q. When you left that company, what
17 was the reason why you left that company?

18 A. Verbal abuse.

19 Q. Verbal abuse by who?

20 A. I don't remember the name of the
21 foreman.

22 MR. RICHMAN: If I leave a space
23 in the record, can you provide the
24 name? If we leave a space in the
25 transcript, can you provide the name

1 S. Espinoza

2 of the foreman that you say you
3 received verbal abuse from?

4 MR. TURCO: He testified he
5 doesn't remember; right?

6 MR. RICHMAN: I am asking if we
7 leave a space and if you can provide
8 the name, provide it.

9 MR. TURCO: You can leave a
10 space if he remembers, sure.

11 (Insert)

12

13 Q. In connection with your
14 employment for approximately six months
15 with this company when you came to the
16 United States, did you take any safety
17 courses?

18 THE INTERPRETER: Any what?

19 MR. RICHMAN: Safety courses.

20 A. Not at that time.

21 Q. Were you working under a work
22 visa?

23 A. No.

24 Q. Did you file tax returns for
25 2018?

1 S. Espinoza

2 A. Yes.

3 MR. RICHMAN: I am going to ask
4 for a copy of those tax returns and
5 I'll send a separate D&I.

6 MR. TURCO: Taken under
7 advisement.

8 Q. When you were verbally abused by
9 your supervisor, did you file a complaint
10 against him or her with anyone?

11 A. No.

12 Q. Before you came to the United
13 States and you were living in Ecuador, who
14 were you living with?

15 A. With my wife.

16 Q. Are you married?

17 A. No.

18 Q. Are you divorced?

19 A. Separated.

20 Q. You are legally married but
21 physically separated?

22 A. I am not exactly married, we
23 just live together.

24 Q. You said before that you were
25 married in Ecuador; is that accurate?

1 S. Espinoza

2 A. That is not correct. I am not
3 married.

4 Q. Do you have any children?

5 A. Yes, I have a daughter.

6 Q. How old is your daughter?

7 A. Three and a half years.

8 Q. Where does your daughter live?

9 A. Ecuador.

10 Q. Does she live with her mother?

11 A. Yes.

12 MR. TURCO: Danny, I need you to
13 try and translate my objection so the
14 client hears it.

15 Can you hear me, Danny? When I
16 object I need you to translate my
17 objection.

18 Objection to the form of the
19 question.

20 Q. When you were living in Ecuador,
21 were you living with your daughter and her
22 mother?

23 A. Yes.

24 Q. For how long?

25 A. With the mother?

1 S. Espinoza

2 Q. With the mother, yes.

3 A. Three to four years.

4 Q. You were living with your
5 daughter and daughter's mother since your
6 daughter was born; is that correct?

7 A. In Ecuador, yes.

8 Q. What was the reason why you left
9 Ecuador and came to the United States?

10 A. I wanted to get a better future.

11 Q. What is your date of birth?

12 A. For who?

13 Q. What is your date of birth?

14 MR. TURCO: Carol, do not put it
15 on the record.

16 A. 00/00/0000.

17 Q. Where were you born?

18 A. Ecuador.

19 Q. While you were living with your
20 daughter for three years, where in Ecuador
21 were you living?

22 THE INTERPRETER: I have to ask
23 him to spell it.

24 A. Lenta, the name of the town is
25 Lenta.

1 S. Espinoza

2 THE INTERPRETER: L-E-N-T-A.

3 Q. During the three years that you
4 were living with your daughter in Ecuador,
5 were you employed?

6 A. Yes.

7 Q. What were you doing?

8 A. In a restaurant.

9 Q. What were you doing in a
10 restaurant?

11 A. I used to grill ribs, I used to
12 grill ribs on a grill.

13 Q. Did you do that full time or
14 something else?

15 A. No.

16 Q. You did that part time?

17 A. Yes.

18 Q. Did you have any other jobs
19 during the last three years while you were
20 living with your daughter in Ecuador other
21 than grilling ribs?

22 A. With my daughter I only lived
23 just for one month.

24 Q. At the time that you left
25 Ecuador, you had employment grilling ribs;

1 S. Espinoza

2 is that correct?

3 A. Yes.

4 Q. How long was that employment
5 for?

6 A. Two months.

7 Q. Before that what did you do?

8 A. Construction.

9 Q. How long did you do construction
10 for in Ecuador?

11 A. I don't know exactly.

12 Q. Approximately how long?

13 A. I don't remember.

14 Q. Did you do construction for more
15 than a year while living in Ecuador?

16 A. Yes.

17 Q. Are you currently a U.S.
18 citizen?

19 MR. TURCO: Note my objection.

20 A. Can you repeat.

21 + Q. Are you currently a U.S.
22 citizen?

23 MR. TURCO: Note my objection.

24 I don't want him to answer that.

25 He has a pending immigration case and

1 S. Espinoza

2 I don't want him to jeopardize that.

3 I am going to direct him not to
4 answer that.

5 MR. RICHMAN: Mark it for a
6 ruling.

7 + Q. Are you currently in the United
8 States pursuant to a visa?

9 MR. TURCO: Note my objection
10 and don't answer the question
11 regarding his immigration status. At
12 this time he has a pending case and I
13 don't want him to testify to anything
14 that would jeopardize his case.

15 MR. RICHMAN: You know I am
16 entitled to know the answer to these
17 questions.

18 MR. TURCO: You can mark it.

19 MR. RICHMAN: Mark it for a
20 ruling.

21 Q. Do you currently have a Social
22 Security number?

23 A. Where? Where? Can you please
24 repeat the question.

25 Q. Do you currently have a Social

1 S. Espinoza

2 Security number?

3 A. Yes.

4 Q. What is that number?

5 MR. RICHMAN: You can put the
6 last four digits on.

7 MR. TURCO: Please make sure
8 it's only the last four.

9 A. I don't have it in hand.

10 MR. RICHMAN: I'll leave a space
11 in the record.

12 (Insert)

13

14 MR. TURCO: Off the record.

15 [Discussion held off the
16 record.]

17 Q. What is your highest level of
18 education?

19 A. I finished third grade or third
20 course.

21 Q. Is that equivalent to the third
22 grade in the United States, if you know?

23 A. I have no idea.

24 Q. Do you know what a high school
25 is?

1 S. Espinoza

2 A. Yes.

3 Q. Did you graduate from high
4 school?

5 A. I have been approved up to
6 ninth. I was approved all the way up to
7 the ninth.

8 MR. RICHMAN: Say it again,
9 Danny.

10 THE INTERPRETER: I was approved
11 all the way up to the ninth.

12 Q. You graduated from ninth grade,
13 is that what you are saying?

14 A. Ninth grade, the following grade
15 is the first class or first year of high
16 school.

17 Q. Was the last year that you
18 finished school in Ecuador ninth grade?

19 A. I finalized the ninth grade.

20 Q. To have graduated from high
21 school you would have had to finish tenth,
22 eleventh, and twelfth grade; is that
23 correct?

24 MR. RICHMAN: I had to tell him
25 in a different way. He is not

1 S. Espinoza

2 understanding. Over there, I'll make
3 a clarification for the record, in
4 different countries like the Dominican
5 Republic, Ecuador, they use high
6 school as first, second, third, and
7 fourth grades for high school.

8 Q. Is high school in Ecuador
9 attending the first, second, third, and
10 fourth grade in high school?

11 A. In Ecuador it's first year of
12 high school, second year of high school,
13 and third year of high school you are
14 ending.

15 Q. Did you attend first year of
16 high school?

17 A. I started but I didn't finish.

18 Q. You did not go to the second
19 year of high school; correct?

20 A. No.

21 Q. You did not attend the third
22 year of high school; correct?

23 A. Correct.

24 Q. What was the reason why you
25 didn't finish the first year of high

1 S. Espinoza

2 school?

3 A. Money problems.

4 Q. The high school in Ecuador
5 required you or your family to pay money
6 to the high school to attend?

7 A. The economy wasn't enough or the
8 finances were not enough.

9 Q. Is it correct that you had to
10 stop attending high school in the first
11 year because you needed to be employed and
12 make money?

13 A. Correct.

14 Q. At that time that you were
15 attending the first year of high school,
16 who were you living with?

17 A. Can you please repeat because I
18 got confused.

19 Q. During the first year that you
20 attended high school, who were you living
21 with?

22 A. With my mother and my father.

23 Q. How old were you when you
24 stopped going to the first year of high
25 school?

1 S. Espinoza

2 A. Eighteen.

3 Q. What was your first employment
4 in Ecuador after you stopped going to the
5 high school?

6 A. In mining.

7 Q. Mining?

8 THE INTERPRETER: Mining, yes,
9 correct.

10 Q. How long were you mining for?

11 A. I used to go and come. I don't
12 know exactly.

13 Q. Was it more or less than six
14 months?

15 A. Yes.

16 Q. What did you do in connection
17 with mining?

18 A. Take out or looking for gold,
19 mining for gold.

20 MR. RICHMAN: What, Danny?

21 THE INTERPRETER: Mining for
22 gold.

23 Q. In connection with that job, did
24 you take any safety courses?

25 A. Yes.

1 S. Espinoza

2 Q. Describe them to me.

3 A. You get a helmet, goggles,
4 gloves.

5 THE INTERPRETER: He said
6 something I couldn't hear. I have to
7 ask him.

8 A. Gloves, helmet, a lantern or
9 flashlight, masks, protective boots, a
10 reflective vest.

11 Q. Anything else?

12 MR. TURCO: You are asking for
13 the gear of mining?

14 MR. RICHMAN: Yes.

15 Q. Were you ever injured on the
16 job?

17 A. No.

18 Q. What was the reason you left
19 that employment?

20 A. I had a limited contract.

21 Q. What was your next job?

22 A. I used to work in a
23 hydroelectric.

24 Q. What did you do there?

25 A. Sweeping.

1 S. Espinoza

2 THE INTERPRETER: He was going
3 to say something.

4 MR. RICHMAN: Sorry, go ahead.

5 A. Shining floors.

6 Q. Did you wear any safety items?

7 A. All the time.

8 Q. Excuse me?

9 A. All of the time.

10 Q. What did you wear or and/or use?

11 A. Harness, reflective vest,
12 goggles.

13 Q. Did you wear a helmet?

14 MR. TURCO: I missed a question
15 before that, what was he describing?

16 MR. RICHMAN: He was describing
17 his safety apparel or equipment while
18 he worked at the hydroelectric.

19 Q. Anything else?

20 THE INTERPRETER: I am not
21 hearing what he is saying.

22 A. I was also directing traffic in
23 the same hydroelectric or guiding traffic.

24 Q. What kind of harness were you
25 wearing?

1 S. Espinoza

2 A. 3 M.

3 Q. What was the reason, what was
4 the purpose of wearing this harness?

5 A. The security guards all of them
6 were required for us to wear it. They
7 won't allow us to work if we didn't have
8 it.

9 Q. Was that a harness that had
10 reflective material on it?

11 A. Yes.

12 Q. How long did you work in this
13 company for?

14 A. One year.

15 Q. What was the reason why you left
16 this company?

17 THE INTERPRETER: I am having
18 difficulty with his audio.

19 A. Because I did not like the food.

20 Q. What was your next job?

21 A. Tractor helper.

22 Q. Tractor helper, what kind of
23 tractor?

24 A. Aruga [phonetically].

25 THE INTERPRETER: I don't know

1 S. Espinoza

2 what that means. I have to ask him

3 the definition of what that means.

4 I am going to ask him if it is a

5 tractor-trailer or a tractor for the

6 farming industry.

7 Is that okay with you?

8 MR. RICHARD: Thanks, Danny.

9 A. A tractor to do transportation,
10 deliveries.

11 MR. TURCO: Everyone, when Danny

12 has to leave at 2:30, do you want to

13 do a window there for lunch or food?

14 Off the record.

15 [Discussion held off the

16 record.]

17 Q. When you were a helper, what

18 exactly did you do?

19 A. I used to carry the fuel. I

20 used to grease up the truck.

21 Q. How long did you do this job

22 for?

23 A. Three months.

24 Q. What was the reason you left

25 this job?

1 S. Espinoza

2 A. The reason was that I had a
3 limited contract.

4 Q. What was your next job?

5 A. I used to be a waiter and a
6 helper at kitchen.

7 Q. In a restaurant?

8 A. A fast-food restaurant.

9 Q. How long did you do that for?

10 A. About a year and a half.

11 Q. What was the reason for leaving
12 that?

13 A. I did not understand.

14 Q. Why did you leave that job as a
15 waiter/helper in the fast-food restaurant?

16 A. I got engaged.

17 Q. What was the name of the person
18 you were engaged to?

19 A. Yes.

20 Q. What is her name?

21 A. Jessica Maribel Pasatos Pizarro.

22 Q. Did you ever marry Jessica?

23 A. No.

24 Q. Is that who you had why you
25 child with?

1 S. Espinoza

2 A. Yes.

3 Q. What was your next job after
4 working at the fast-food restaurant?

5 A. Construction again.

6 Q. How long did you have that job?

7 A. Two months.

8 Q. What kind of construction did
9 you personally do?

10 A. I used to mix the sand, cleaning
11 the corners.

12 Q. Anything else?

13 A. Pick up material, sand.

14 Q. Did you wear any safety
15 equipment?

16 A. Yes.

17 Q. Describe it.

18 A. Helmet, gloves.

19 Q. Did you use a ladder in
20 connection with that job?

21 A. The stairs of the building.

22 Q. Did you ever use a ladder in
23 connection with performing your
24 construction duties?

25 MR. TURCO: Ever before this --

1 S. Espinoza

2 MR. RICHMAN: During this job
3 for two months.

4 THE INTERPRETER: I have an
5 interpreter that will not be able to
6 come in until 2:30. She can't come in
7 at 2:15.

8 MR. RICHMAN: When do you end,
9 2:30?

10 THE INTERPRETER: I can end at
11 2:30.

12 MR. RICHMAN: You want her to
13 come in at 2:45?

14 Off the record.

15 [A discussion was held off the
16 record.]

17 MR. RICHMAN: Please read back
18 the answer.

19 [The requested portion of the
20 record was read.]

21 MR. RICHMAN: I just wanted it
22 for clarity.

23 Q. Did you ever use a ladder in
24 connection with your duties?

25 A. I would use the ladder to be

1 S. Espinoza

2 able to go up with the sand and the sand I
3 would bring it up in a bag.

4 Q. Did you use an A-frame ladder or
5 straight ladder?

6 A. It was as a staircase, it's a
7 concrete staircase.

8 Q. Do you know what a ladder is?

9 A. Can you please specify.

10 Q. In connection with this incident
11 involving this lawsuit, did you fall from
12 a ladder?

13 A. Could you be more specific
14 because I did not understand.

15 Q. Were you involved in an incident
16 on June 28, 2019?

17 A. Yes.

18 Q. Is that the reason why you
19 commenced this lawsuit?

20 A. Yes.

21 Q. At the time of that incident on
22 June 28, 2019, were you using a ladder?

23 A. Yes.

24 Q. Was the ladder aluminum?

25 A. It was fiberglass.

1 S. Espinoza

2 Q. Were the outside rails of the
3 ladder green?

4 MR. TURCO: I object to the
5 question. Go ahead.

6 A. Yes.

7 Q. Was the ladder involved in the
8 incident on June 28, 2019 an A-frame
9 ladder or something else?

10 A. No.

11 Q. It was a straight ladder?

12 A. The ones that you open.

13 Q. It opens on two sides and looks
14 like an A when it opens; is that correct?

15 A. Yes.

16 MR. TURCO: You can probably ask
17 him again the A-frame question.

18 MR. RICHMAN: I'll get back to
19 it.

20 Q. Did you ever use that type of
21 ladder before the incident on June 28,
22 2019?

23 A. Yes.

24 Q. Did you use that A-frame type of
25 ladder in connection with the construction

1 S. Espinoza

2 job that you had for two months in Ecuador
3 that we were just talking about?

4 A. I didn't have any idea that that
5 type of ladder existed.

6 Q. The first time that you used the
7 ladder that was green in parts was on June
8 28, 2019?

9 MR. TURCO: Note my objection.

10 THE INTERPRETER: Can I
11 translate? Can he answer?

12 MR. RICHMAN: Yes, go ahead.

13 A. Yes.

14 Q. After this construction job that
15 you had for two months in Ecuador, what
16 was the reason why you left that job?

17 A. My wife was having symptoms of
18 pregnancy and I had to stop working there.

19 Q. What was your next job?

20 A. I did not work for various
21 months.

22 Q. Did you ever obtain employment
23 after this construction job that you
24 worked for two months while you were
25 living in Ecuador?

1 S. Espinoza

2 A. After that I didn't get -- I
3 couldn't find more work.

4 Q. The answer to that question is
5 no?

6 A. No.

7 MR. TURCO: Just answer just
8 what he is asking. If you can
9 estimate, great. You can answer yes
10 or no. Listen to the very specific
11 question, please.

12 Q. At the time that you left
13 Ecuador, you were not employed for some
14 period of time before you left; correct?

15 A. I didn't have more work.

16 Q. How long a period of time would
17 you approximate you were not working
18 before you left Ecuador?

19 A. I don't remember exactly.

20 Q. Was it more than six months?

21 A. It's been a long time ago.

22 Q. Can you give me an approximate
23 period of time?

24 A. No.

25 MR. TURCO: Do you understand

1 S. Espinoza

2 the question?

3 THE WITNESS: No.

4 MR. TURCO: Before you left
5 Ecuador, when was last time you were
6 employed?

7 THE WITNESS: About a year.

8 Q. What did you do during that
9 year?

10 A. Take care of the family.

11 Q. Who were you living with during
12 that one year?

13 A. With Jessica Maribel Pasatos.

14 Q. Are you currently taking any
15 medication?

16 A. Yes.

17 Q. Have you taken any medication
18 within the last twenty-four hours?

19 A. No.

20 Q. When is the last time you took
21 any medication?

22 A. Yesterday.

23 Q. What did you take yesterday?

24 A. Yesterday I took two pills at
25 six p.m.

1 S. Espinoza

2 Q. What kind of pills?

3 A. I don't remember the name.

4 Q. Was it prescribed to you by a
5 doctor?

6 A. Yes.

7 Q. What is the name of the doctor?

8 A. I don't remember.

9 Q. What were the pills for?

10 A. For the pain.

11 Q. Say is again. What?

12 THE INTERPRETER: For the pain.

13 Q. Pain where?

14 A. Lower back to the left.

15 Q. Describe the pain.

16 A. I have pain on my lower back, my
17 buttocks area, my legs on the sides and
18 down to my feet.

19 Q. This pain you have just
20 described, are you claiming that is the
21 result of your incident on June 28, 2019?

22 A. Yes.

23 Q. Have you ever been convicted of
24 a crime?

25 A. No.

1 S. Espinoza

2 Q. Have you ever filed for
3 bankruptcy?

4 A. No.

5 Q. Are you aware of any judgments
6 or liens against you?

7 A. No.

8 Q. With the exception of this
9 current lawsuit, have you ever been a
10 plaintiff or a defendant in a lawsuit?

11 A. No.

12 Q. Have you ever attended any
13 vocational or trade schools?

14 A. Do you mean OSHA classes?

15 Q. Anything.

16 MR. TURCO: Any additional
17 training classes, any additional
18 higher education.

19 A. The classes of OSHA only.

20 Q. When did you attend OSHA
21 classes?

22 A. What do you mean?

23 Q. You just said you attended OSHA
24 classes. When did you attend OSHA
25 classes?

1 S. Espinoza

2 A. Okay, approximately April of
3 2019, approximately April of 2019.

4 Q. April of 2019?

5 A. Yes.

6 Q. Let's go back. You said earlier
7 your first employment in the United States
8 started October 4, 2018 and you worked in
9 construction as a laborer for
10 approximately six months.

11 MR. TURCO: Note my objection.
12 You can answer.

13 A. I didn't understand.

14 Q. Do you remember testifying
15 earlier today that you told me that your
16 first job in the United States started
17 October 4, 2018?

18 A. Yes.

19 Q. And that you worked there for
20 approximately six months and you left
21 because you claim you were verbally
22 abused; correct?

23 A. Yes.

24 Q. What was your next job after
25 that job?

1 S. Espinoza

2 A. Putting metals in the same area
3 of construction.

4 MR. RICHMAN: Say it again,
5 Danny.

6 A. Putting metals in the same area
7 of construction.

8 MR. RICHMAN: Putting metals in
9 the same area of construction, is that
10 what he said?

11 THE INTERPRETER: That is what
12 he said.

13 MR. TURCO: Did you understand
14 the question?

15 Q. Do you understand my question?
16 I am asking you what your next job was
17 after the first job in the U.S.

18 THE INTERPRETER: He answered
19 working in construction putting
20 metals.

21 MR. TURCO: Danny, when you
22 interpreted that, I didn't hear
23 working in construction putting metals
24 in.

25 THE INTERPRETER: In the same

1 S. Espinoza

2 area of construction.

3 Q. When did you start this job, do
4 you know?

5 A. After I stopped working at that
6 other job, around January.

7 Q. January of 2019?

8 A. Yes.

9 Q. What was the name of the person
10 or company you worked for?

11 A. It was an odd job.

12 Q. How long did you work at this
13 odd job putting metals?

14 A. About two months more or less or
15 something like that.

16 Q. Can you describe for me what you
17 mean by putting metals, what that means.

18 A. Okay. The metals that go behind
19 this.

20 (Indicating)

21 MR. TURCO: Indicating the wall.

22 Q. You are talking about the
23 installing metal columns that hold
24 interior walls?

25 A. Yes.

1 S. Espinoza

2 Q. Were you working for a company
3 or a person or something else?

4 A. It was for a person.

5 Q. Do you know the name of that
6 person?

7 A. No.

8 Q. Were you wearing any safety
9 equipment in connection with that job?

10 A. Goggles, gloves, only.

11 Q. Did you use any ladders like you
12 had used in connection with the incident
13 on June 28, 2019, in connection with that
14 job?

15 A. The majority of the work or the
16 jobs were on the ground. They were not
17 high.

18 Q. Did you use any kind of ladder
19 in connection with that job?

20 A. Yes, I used.

21 Q. What kind of ladder?

22 A. Type A.

23 Q. When you are talking about type
24 A, are you referring to the same type of
25 ladder that was involved in the incident

1 S. Espinoza

2 on June 28, 2019?

3 A. Yes.

4 Q. What was the reason why you left
5 this job?

6 A. It was too scarce of work, not
7 that much work, I stayed home too much.

8 MR. RICHMAN: You want to stop
9 here, Danny? I know you have to leave
10 at 2:30.

11 [At this time Nora Youmans,
12 Spanish interpreter, entered the Zoom
13 meeting.]

14 We are going to take a half hour
15 break for lunch.

16 MS. YOUMANS: No problem.

17 MR. TURCO: We wanted to see
18 that you are on board. We are going
19 to convene at three o'clock and go to
20 about 4:20 today and break.

21 [Whereupon, after a luncheon
22 recess was taken, the following was
23 had:]

24 A F T E R N O O N S E S S I O N

25 BY MR. RICHMAN:

1 S. Espinoza

2 Q. Prior to lunch, we were talking
3 about your second job while you were
4 living in the United States of putting
5 metals or columns for interior walls.

6 You said you started in or about
7 January of 2019 and worked there for two
8 months; correct?

9 A. Yes.

10 Q. What was the reason you left
11 that job?

12 A. Because they didn't have any
13 jobs.

14 Q. What was your next job?

15 A. Working with this gentleman.

16 Q. Working with what gentleman?

17 A. With the company. The company.

18 Q. We are talking about Jim
19 Associates?

20 A. Yes.

21 Q. When did you start working for
22 Jim Associates, what month?

23 A. Approximately in May.

24 Q. Of what year?

25 A. 2019.

1 S. Espinoza

2 Q. How did you get that job?

3 A. From a friend.

4 Q. Did you do an interview with a
5 person at Jim Associates in connection
6 with getting that job?

7 A. No.

8 Q. Did you submit any paperwork
9 through them in connection with getting
10 that job?

11 A. No.

12 Q. Did you have any conversations
13 with anyone about getting that job?

14 A. Yes, I was unemployed and I was
15 looking for a job.

16 Q. Who did you speak to first at
17 Jim Associates in connection with getting
18 that job?

19 A. His name is Jorge.

20 Q. Is his last name Moscoso,
21 M-O-S-C-O-S-O?

22 A. I don't know his last name.

23 Q. Was Jorge the owner, as far as
24 you know, from Jim Associates?

25 A. I didn't know.

1 S. Espinoza

2 Q. Did you know who the owner of
3 Jim Associates was?

4 THE INTERPRETER: One second.
5 He said something else after his
6 answer.

7 A. At the beginning I didn't know.
8 Then I heard that he was like the owner or
9 a partner. I don't know exactly.

10 Q. Before the lunch break, you
11 talked about you took some OSHA classes,
12 do you recall?

13 A. Yes.

14 Q. Were you employed by anyone at
15 the time you took these OSHA classes?

16 A. I was unemployed.

17 Q. What was the reason you took the
18 OSHA classes?

19 MR. TURCO: Did he say he was
20 unemployed?

21 MR. RICHMAN: He said he was
22 unemployed.

23 MR. TURCO: Thank you.

24 A. They asked for this. It was a
25 requirement in order to get a job.

1 S. Espinoza

2 Q. Who is the they that asked for
3 this?

4 A. In the places I was like are
5 looking for a job.

6 Q. Was taking an OSHA class a
7 requirement when you were working at the
8 job before Jim Associates?

9 A. No, after I left that job.

10 Q. After you left that job where
11 you were putting metals on interior walls,
12 you were looking for employment at other
13 prospective employers wanted you had to
14 take OSHA classes; is that correct?

15 A. Yeah, at that time I wasn't
16 working.

17 Q. How many OSHA classes did you
18 take?

19 A. All the classes, thirty hours.

20 Q. Did you get a certificate that
21 you completed the OSHA classes?

22 A. Yes.

23 Q. Do you have at a certificate?

24 A. I have the card.

25 MR. RICHMAN: I am going to ask

1 S. Espinoza

2 for the production. I'll send you a
3 separate D & I.

4 Q. When did you take the thirty
5 hours of OSHA classes?

6 MR. TURCO: It was OSHA 30 he
7 said?

8 MR. RICHMAN: Yes.

9 THE INTERPRETER: Can you repeat
10 the question.

11 Q. When did you take the thirty
12 hours of OSHA classes?

13 A. I don't remember the date
14 exactly.

15 Q. Although you don't remember the
16 date, it was sometime prior to working at
17 Jim Associates and after working at the
18 prior job where you were putting the
19 metals on the interior walls; correct?

20 A. Something like that, yes.

21 Q. Where did you attend these
22 classes?

23 A. In Queens.

24 Q. Do you know where?

25 A. The address I don't know. I

1 S. Espinoza

2 don't know the address exactly.

3 Q. Were the OSHA classes live,
4 in-person?

5 A. Yes.

6 Q. Did you take any other classes
7 other than the thirty hours of OSHA
8 classes?

9 A. No.

10 Q. Do you have a driver's license?

11 A. No, I haven't done that.

12 Q. Do you drive a car?

13 A. Not at this moment.

14 Q. Did you drive a vehicle when you
15 were employed at Jim Associates?

16 A. Sometimes I will park, just
17 that.

18 Q. Did you ever have a driver's
19 license, New York State driver's license?

20 MR. TURCO: Note my objection.

21 This is sort of irrelevant.

22 MR. RICHMAN: I am not going any
23 further. That is the last question.

24 Q. Did you ever have a driver's
25 license, New York State driver's license?

1 S. Espinoza

2 A. In Ecuador.

3 Q. But not in New York State;
4 correct?

5 A. No, not from New York.

6 Q. Did you file a Workers'
7 Compensation claim as a result of this
8 incident?

9 A. I don't know exactly what you
10 are referring to.

11 Q. Do you know what a Workers'
12 Compensation claim is?

13 A. If you are referring to the
14 Compensation?

15 Q. Yes.

16 A. Yes.

17 Q. Are you represented by an
18 attorney in the Workers' Compensation
19 claim?

20 A. Yes.

21 Q. Can you tell me his or her name?

22 A. I don't remember.

23 MR. RICHMAN: Will you supply
24 his contact information?

25 MR. TURCO: I can give you the

1 S. Espinoza

2 name now.

3 By counsel, it's Fogelgaren,
4 Forman & Bergman.

5 Q. Sir, have you ever been in an
6 auto accident?

7 A. No.

8 Q. Have you ever been in any
9 accident other than this incident that
10 took place on June 28, 2019?

11 A. No.

12 Q. What is your current height and
13 weight?

14 A. Approximately five-seven and my
15 weight approximately two hundred ten
16 pounds.

17 Q. Did you gain or lose any weight
18 since the incident?

19 A. I gained weight.

20 Q. How much did you gain?

21 A. Before this my weight was one
22 hundred sixty-five pounds approximately.

23 Q. You gained approximately
24 forty-five pounds since the incident?

25 A. Yes.

1 S. Espinoza

2 Q. Are you left-handed or
3 right-handed?

4 A. Right-handed.

5 Q. Do you wear glasses at all,
6 prescription glasses or contact lenses?

7 A. Only to drive but lately I
8 haven't been using them at all.

9 Q. Are those prescription glasses
10 you need to drive?

11 A. For the sun.

12 Q. You mean sunglasses?

13 A. Yes.

14 Q. You don't use glasses to see
15 things either close or faraway; right?

16 A. No, I don't need.

17 Q. Are you currently employed?

18 A. No.

19 Q. When is the last time you were
20 employed?

21 A. Before the accident.

22 Q. Since the accident on June 28,
23 2019, to-date, you have never had any
24 employment; is that correct?

25 A. Yes.

1 S. Espinoza

2 Q. Are you currently enrolled in
3 any school or vocation?

4 A. English school.

5 Q. Are you presently attending
6 school to learn English?

7 A. Yes.

8 Q. What school, where?

9 A. It's a school that belongs to
10 the government. It's close to my house.

11 Q. Do you know the name of the
12 school?

13 A. No.

14 Q. How long have you been attending
15 this school?

16 A. Approximately two or three
17 weeks.

18 Q. Are the classes live?

19 A. Yes.

20 Q. How long are the classes in a
21 particular day?

22 A. Six to 8:30 Mondays -- Tuesdays,
23 Wednesdays, and Thursdays.

24 Q. What hours?

25 A. Six to 8:30.

1 S. Espinoza

2 Q. When you started working at Jim
3 Associates, did you have an agreement with
4 them as to what your salary would be?

5 A. He told me that I was going to
6 get paid according to my improvement.

7 Q. When you started at Jim
8 Associates, how much did you get paid?

9 A. Somewhere around six hundred.

10 Q. \$600 per week?

11 A. Yes, something like that.

12 Q. What were your hours?

13 A. It wasn't like regular, there
14 were no regular hours.

15 Q. When you started work at Jim
16 Associates, what were your average number
17 of hours per day or per week?

18 A. Sometimes I would get there at 6
19 a.m. or 7 a.m. and from there, we will
20 count eight hours.

21 Q. Eight hours per day?

22 A. Yes.

23 Q. You said before that you started
24 in May 2019.

25 Approximately when did you start

1 S. Espinoza

2 in May? Was it the beginning of May, the
3 end of May, something else?

4 A. The exact day I don't know.

5 Q. For how many weeks did you work
6 for Jim Associates before the incident
7 happened?

8 A. I usually don't count the time
9 when I am working.

10 MR. BRIGANTIC: It was not
11 responsive.

12 Q. Did you work for Jim Associates
13 about four to six weeks before the
14 incident happened or something else?

15 A. Yeah, probably it could be
16 something like that. I don't count the
17 time. I only count the checks in the
18 weekends.

19 Q. Did you work for Jim Associates
20 at least four weeks before the incident
21 happened?

22 A. I don't remember. I don't know
23 exactly the number of weeks.

24 Q. Was your paycheck always the
25 same every week?

1 S. Espinoza

2 A. Sometimes a little more.

3 Q. How much is a little more?

4 A. When I work Saturdays, it will
5 be seven hundred.

6 Q. If you work more than forty
7 hours, did you receive overtime pay?

8 A. Well, it was just a little more,
9 like three or four or five more dollars.

10 Q. Three, four, \$5 more per hour?

11 A. Yes.

12 Q. Did you file tax returns for
13 2019?

14 A. I would have to check.

15 MR. RICHMAN: I think I had
16 called for the production of 2018 tax
17 returns, I am going to call for the
18 production of the 2019 tax returns,
19 and I'll send it in a separate D & I.

20 MR. BRIGANTIC: I looked back
21 during lunch at my Combined Demands to
22 the plaintiff and I already asked for
23 tax returns and was told the plaintiff
24 didn't have them.

25 MR. TURCO: Taken under

1 S. Espinoza
2 advisement. He was not self-employed.
3 It is our position, you are not
4 entitled to the tax returns and there
5 is case law that supports this.

6 We did, however, provide you
7 with his Workers' Compensation Board
8 authorizations and we also provided
9 you with his employment
10 authorizations, which contains his
11 rate of pay and everything having to
12 do with his lost wage claim.

13 However, if you want to send the
14 request, we will take it under
15 advisement.

16 MR. BRIGANTIC: What I am
17 saying --

18 MR. RICHMAN: Bob, Bob, it's my
19 deposition.

20 MR. BRIGANTIC: I know.

21 MR. RICHMAN: You can do yours.

22 MR. BRIGANTIC: All I said was I
23 already sent it. Go ahead.

24 MR. TURCO: That's fine.

25 Q. When you started at Jim

1 S. Espinoza

2 Associates, what was your job position?

3 Did it have a name to it?

4 A. I didn't have like a name or
5 anything. I was doing like everything
6 they asked me to. I was like a helper.

7 Q. You considered yourself while
8 employed at Jim Associates a helper; is
9 that correct?

10 MR. TURCO: Note my objection.

11 Asked and answered. He said HE
12 did a little bit of everything.

13 MR. RICHMAN: That is not my
14 question though.

15 A. Can you repeat the question.

16 Q. Did you consider yourself a
17 helper as an employee working for Jim
18 Associates?

19 A. I cannot answer to that.

20 Q. Did you consider yourself a
21 laborer while you were employed at Jim
22 Associates?

23 A. I could do like whatever job
24 they asked me to like in general.

25 Q. Did you consider yourself a

1 S. Espinoza

2 carpenter while you were employed at Jim
3 Associates?

4 MR. TURCO: Note my objection.

5 You can answer.

6 A. Yes.

7 Q. When you were working at Jim
8 Associates, did you have a direct
9 supervisor, a person who told you what to
10 do?

11 A. No. They will only indicate me
12 what to do.

13 Q. Say is again.

14 A. They will only indicate me what
15 to do.

16 Q. Can you tell me the name of the
17 person that would tell you what to do?

18 A. Jorge and sometimes we will work
19 together.

20 Q. Jorge would tell you what to do
21 when you were working on a particular job
22 site; correct?

23 A. Yes.

24 Q. When you were working at Jim
25 Associates before this incident, before

1 S. Espinoza

2 the incident happened --

3 MR. RICHMAN: Withdrawn.

4 Q. Did you work on numerous job
5 sites before this incident happened all
6 while you were employed at Jim Associates?

7 MR. TURCO: Objection to form.
8 You can answer.

9 A. Yes.

10 Q. Tell me how you would get to
11 work, get to a particular job site?

12 A. I would take the train to the
13 office and then this man would take me to
14 the job site.

15 Q. You would leave your home and
16 you would take a train to the offices of
17 Jim Associates each morning that you were
18 working; correct?

19 A. Yes.

20 Q. Then you would go in a car or a
21 van to the job site with Jorge; correct?

22 A. In a van.

23 Q. Would you go with other people
24 that were working at Jim Associates other
25 than you and Jorge?

1 S. Espinoza

2 A. Most the time I will work with
3 Jorge.

4 Q. Were there job sites that you
5 were working on with people in addition to
6 you and Jorge before the incident?

7 A. Yes, more people.

8 MR. BRIGANTIC: Was there any
9 answer to whether there were other
10 people that were in the van when he
11 went to work?

12 THE INTERPRETER: The answer to
13 that was sometimes I would --

14 MR. TURCO: Sometimes.

15 THE INTERPRETER: No. Most of
16 the time I work with Jorge. That was
17 his answer.

18 MR. BRIGANTIC: The answer
19 doesn't go with the question.

20 Q. Sometimes you would be in the
21 van with other people that were employees
22 of Jim Associates; correct?

23 MR. TURCO: Objection to form.
24 You can answer.

25 A. I prefer not to answer.

1 S. Espinoza

2 Q. No, no, no, you have to answer.

3 MR. TURCO: If you can rephrase
4 the question, was there anyone else in
5 the van.

6 MR. RICHMAN: I'll rephrase it.

7 Q. When you went to a job site
8 with Jorge, first of all, all the jobs
9 sites you went to while you were working
10 at Jim Associates, was Jorge always with
11 you?

12 A. Most of the jobs sites, yes.

13 Q. Did you ever go to any job sites
14 alone?

15 A. Yes.

16 Q. Did you ever go to job sites
17 with people in addition to Jorge?

18 A. Yes.

19 Q. Were those other people
20 employees of Jim Associates?

21 A. It was a brother and another
22 employee.

23 Q. It was Jorge's brother?

24 A. Yes.

25 Q. Do you know his name?

1 S. Espinoza

2 A. No.

3 Q. Do you know the names of any
4 other employees that you went to any job
5 sites with before this incident happened?

6 MR. TURCO: Note my objection.

7 A. No.

8 Q. No, you don't know their names
9 or no, you don't want to tell me their
10 names?

11 A. I usually don't learn the other
12 people's names.

13 MR. BRIGANTIC: It's
14 nonresponsive.

15 Q. Did you know the names of these
16 other people that you went on different
17 job sites at the time that you went on
18 these job sites with these other people
19 other than you and Jorge?

20 MR. TURCO: Note my objection.
21 Asked and answered. You can
22 answer again.

23 MR. RICHMAN: He didn't answer
24 it.

25 A. I usually don't remember the

1 S. Espinoza

2 names.

3 Q. Do you remember their names
4 today; yes or no?

5 MR. TURCO: Note my objection.

6 Nora, are you translating my
7 objections?

8 THE INTERPRETER: Yes, I said
9 objection but you can answer.

10 A. No, the only thing I know, one
11 was a brother and the other one was a
12 clerk.

13 Q. The clerk is the one that went
14 in the van to job sites with you at times?

15 A. Yes. I don't understand.

16 Q. You just said the clerk would go
17 with you and Jorge or go with you
18 sometimes at various job sites.

19 When you said the clerk, what do
20 you mean by a clerk?

21 A. The name of this person, I don't
22 remember at this moment, maybe later.

23 Q. Is the name of this person
24 Clerk?

25 A. No, I don't think so.

1 S. Espinoza

2 Q. What did you mean when you just
3 said clerk, what do you mean by that?

4 A. Yeah, it's a person that does
5 the checks.

6 Q. The person that does the checks
7 sometimes went to the job site with you
8 and Jorge?

9 A. Yes, sometimes.

10 Q. How many projects, how many job
11 sites, different job sites did you go to
12 before the incident took place on June 28,
13 2019?

14 MR. TURCO: Objection to form.
15 He can answer.

16 A. Around three or four job sites.

17 Q. The first job site that you went
18 to when you started working at Jim
19 Associates, do you recall where that job
20 site was?

21 A. One was in Brooklyn, the other
22 one in the Bronx, and the other one in
23 Queens or Long Island, somewhere there.

24 Q. Was the first job in Brooklyn?

25 A. No.

1 S. Espinoza

2 Q. Where was the first job?

3 A. I think somewhere in Queens. I
4 don't remember.

5 MR. TURCO: Don't guess.

6 If you don't know for sure, let
7 them know you don't know for sure.

8 THE WITNESS: Okay.

9 Q. You are not sure where the first
10 job site was; correct?

11 A. I don't know.

12 Q. Do you recall what work was
13 being done at that job site, the first job
14 site you did while working at Jim
15 Associates?

16 A. They were building bathrooms,
17 they were building apartments, working in
18 the bathrooms.

19 Q. What did you do at that first
20 job site?

21 A. Sheetrock, plywood on the
22 ground, and prepare the walls.

23 Q. Who supervised your work on that
24 first project?

25 A. There is another person there.

1 S. Espinoza

2 Q. What is his or her name?

3 A. I don't remember the name.

4 Q. Was Jorge there on that first
5 job?

6 A. Yes, he will get there to the
7 job site.

8 Q. Did he tell you what to do at
9 the job site, Jorge?

10 A. Yes.

11 Q. When you were first started
12 working at Jim Associates, were you given
13 any safety equipment?

14 A. What kind of safety?

15 Q. You tell me.

16 MR. TURCO: Note my objection.
17 If you want to break it down.

18 Q. Did Jim Associates provide you
19 with any safety goggles?

20 A. One moment, let me remember.

21 MR. TURCO: Do you need to
22 stand? Your back?

23 MR. RICHMAN: He said helmet.

24 A. Goggles and a hardhat.

25 Q. Goggles and a hardhat. Anything

1 S. Espinoza

2 else?

3 A. Gloves. That is all.

4 Q. Did you use your safety goggles,
5 hardhat, and gloves on the first job site
6 while you were working at Jim Associates?

7 A. Yes.

8 Q. Did you wear them all the time
9 that you were working?

10 A. Most time I would use gloves and
11 a hardhat.

12 Q. What about safety goggles?

13 A. Only when I was going to cut
14 wood or some metal.

15 Q. Do you remember where the second
16 job site was while you were working at Jim
17 Associates?

18 A. It was in Brooklyn. It was a
19 demolition.

20 Q. What did you do at that job
21 site?

22 A. Demolish a wall and also the
23 roofs.

24 Q. Were you wearing safety
25 equipment during that project?

1 S. Espinoza

2 A. Yes.

3 MR. TURCO: Hold on. I got to
4 take this, my wife.

5 There is no, there is no
6 question pending; right?

7 MR. RICHMAN: No.

8 [A pause in the proceedings.]

9 MR. RICHMAN: Please read back
10 the last question and answer.

11 [The requested portion of the
12 record was read.]

13 Q. Describe the safety equipment
14 that you had or were wearing or using?

15 A. Hardhat and gloves.

16 Q. Did Jim ever provide you with a
17 safety harness on any projects that you
18 worked on?

19 A. I don't remember.

20 Q. What was the third job site that
21 you were working on for Jim Associates?

22 MR. TURCO: Prior to the subject
23 site?

24 MR. RICHMAN: Yes.

25 A. I think it was a house in

1 S. Espinoza

2 Brooklyn. We went to paint something. I
3 don't know exactly.

4 Q. What did you do there?

5 A. We painted the apartment.

6 Q. Was there a fourth job site
7 before the incident happened or was that
8 when the incident happened, the fourth job
9 site?

10 A. Let me remember. I think it was
11 a house that we were paint something
12 there. I think it was in Queens or Long
13 Island, somewhere there.

14 Q. What did you do, painting?

15 A. We wash the ground and then we
16 paint the outside or the house.

17 Q. What was the next job site,
18 which would be the fifth job site, where
19 was that?

20 A. The accident would be.

21 MR. TURCO: Counsel for Dava
22 Partners has to attend a Court
23 Conference at 4:30. He requested that
24 the deposition end today now.

25 We consent to the ending of the

1 S. Espinoza
2 deposition at this time. However, we
3 are going to produce my client for one
4 more day of deposition, as the day is
5 probably four hours of actual
6 testimony, to the extent that counsel
7 for Davs Partners and Kalnitech have
8 to expedite their question asking so
9 we do not have to produce our client
10 again for a third time.

11 MR. BRIGANTIC: I am not
12 consenting to have my questioning
13 limited by someone else's duration.
14 I'll follow up and I am not going to
15 redo stuff but I am not going to agree
16 that I can't question somebody if the
17 whole time is exceeded.

18 MR. TURCO: No one is telling
19 you are not allowed to question him.
20 I think we can expedite it. Today was
21 choppy. I think Keith would agree we
22 can get through liability and damages
23 in one more full day.

24 MR. RICHMAN: I don't see why
25 not.

1 S. Espinoza

2 MR. BRIGANTIC: Me neither if we
3 start early.

4 MR. TURCO: We will have our
5 respective offices coordinate the next
6 date.

7 [TIME NOTED: 4:17 p.m.

8

9

10 STALIN RODRIGO REYES ESPINOZA

11

12

13

14

15 Subscribed and sworn to

16

17 before me this _____

18

19 day of _____ 2021.

20

21

22 Notary Public

23

24

25

I N D E X

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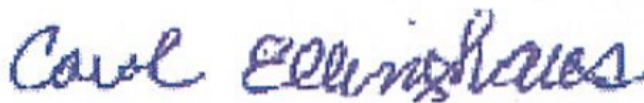
CERTIFICATION

I, Carol Ellinghaus, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of November,
2021.



CAROL ELLINGHAUS

* * *

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: ESPINOZA V. DAVS PARTNERS
DATE OF DEPOSITION: 11/17/21
WITNESS' NAME: STALIN ESPINOZA

[illegible]

STALIN RODRIGO REYES ESPINOZA

SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY
OF _____, 2021.

NOTARY PUBLIC

MY COMMISSION EXPIRES _____

[& - approximately]

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Civil Practice Law and Rules
Article 31 Disclosure, Section 3116

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